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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 54, No. 141

Tuesday, July 25, 1989

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR

Proposed Rules:

930 30898

7 CFR

1139 30881
1945 30882
1980 30882

Proposed Rules:

1036 30898
1131 30903

10 CFR

39 30883

Proposed Rules:

50 30905

12 CFR

Proposed Rules:

335 30976

14 CFR

39 (2 documents) 30885, 30886

Proposed Rules:

39 30906

15 CFR

Proposed Rules:

8b 31002

20 CFR

Proposed Rules:

404 30907
416 30907

24 CFR

235 30889

28 CFR

Proposed Rules:

73 30910

33 CFR

117 30890

40 CFR

52 30891

41 CFR

101-38 30892

43 CFR

Public Land Orders:

6731 30973

47 CFR

22 30895
73 (2 documents) 30896, 30897

48 CFR

Proposed Rules:

203 30911
209 30911
252 30911

Rules and Regulations

Federal Register
Vol. 54, No. 141
Tuesday, July 25, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1139

[DA-89-023]

Milk in the Great Basin Marketing Area; Revision of Diversion Limits and of Cooperative Manufacturing Plant Shipping Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action increases the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the Great Basin Federal milk order. The action increases the percentage of producer milk that the operator of a pool plant may divert to nonpool plants from 60 percent to 70 percent during the months of April through August, and from 50 percent to 60 percent in other months. The action was requested by two proprietary pool plant operators whose milk is supplied by independent producers.

In addition, the percentage of its producer milk that a pool manufacturing plant owned and operated by a cooperative association and located in the marketing area must deliver to pool distributing plants during any current month or during the 12-month period ending with the current month in order to meet the order's pooling standards is reduced from 40 percent to 35 percent. This action was requested by a cooperative association representing a large proportion of the producers supplying the market in order to prevent uneconomic movements of milk. At the request of the cooperative, the shipping percentage has already been reduced from 45 percent to 40 percent.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, 202-447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Diversion Limitation Percentage: Issued June 9, 1989, published June 15, 1989 (54 FR 25466).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action will provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action will also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of §§ 1139.7(e) and 1139.13(d)(4) of the Great Basin Federal milk order.

Notice of proposed rulemaking was published in the **Federal Register** (54 FR 25466) concerning a proposed increase in the percentage of producer milk that the operator of a pool plant may divert to nonpool plants from 60 to 70 percent during the months of April through August, and from 50 percent to 60 percent in other months. Also proposed was an additional 5 percent relaxation of the percentage of its producer milk that a manufacturing plant owned and operated by a cooperative association and located in the marketing area must deliver to pool distributing plants during any current month or during the 12-month period ending with the current month in order to meet the order's pooling standards. The notice of proposed revision stated that the revision would be effective beginning June 1989. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by June 22, 1989.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the diversion limitation percentage set forth in § 1139.13(d)(3) should be relaxed from 60 to 70 percent during the months of April through August, and from 50 percent to 60 percent in other months, beginning with the month of June 1989. In addition, also beginning with the month of June 1989, the percentage of producer milk required by § 1139.7(d) to be shipped to pool distributing plants by a manufacturing plant owned and operated by a cooperative and located in the marketing area should be reduced by an additional 5 percentage points, from 40 percent to 35 percent.

Sections 1139.7(e) and 1139.13(d)(4) of the Great Basin milk order allow the Director of the Dairy Division to increase or reduce the diversion limitation percentage and the shipping percentage requirement by up to 10 percentage points to assure orderly marketing and efficient handling of milk in the marketing area. Such changes may be made to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Gossner Foods, Inc., and K.D.K., Inc., two proprietary handlers who obtain their milk supplies from independent producers pooled under the Great Basin order, requested that the percentage of producer milk allowed to be diverted to nonpool plants be increased 10 percentage points. Western Dairymen Cooperative, Inc. (WDCI), a cooperative association which represents a majority of the producers supplying the Great Basin market, requested that the percentage of producer milk required to be shipped to pool distributing plants from a plant owned and operated by a cooperative association and located in

the marketing area be reduced an additional 5 percentage points. WDCI had already requested a 5-percent reduction in the shipping percentage.

The handlers stated that loss of sales and increasing production make necessary an increase in the percentage of producer milk allowed to be shipped directly to nonpool manufacturing plants rather than delivered to pool plants, and a reduction in the percentage of producer milk required to be shipped to pool distributing plants by a cooperative manufacturing plant. According to the handlers, such action is necessary in order to maintain the pool status of their producers who have long been associated with the marketing area.

No comments opposing the revisions were received.

Without the revisions, milk would have to be moved unnecessarily and uneconomically from farms to pool distributing plants for the sole purpose of maintaining the pool status of producers historically pooled under the Great Basin order. In addition to such movements of milk being inefficient and uneconomic, the additional pumping to which the milk would be subject would be detrimental to the quality of the milk. It is concluded that the relaxation of the order's diversion limits and cooperative manufacturing plant shipping requirement will prevent uneconomic movements of milk to pool plants merely for the purpose of qualifying it as producer milk under the order. The provisions of the order allow the diversion limits and the shipping requirement to be tightened up, as well as relaxed, if such action were deemed appropriate at some later time.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision.

Therefore, good cause exists for making this revision effective sooner than 30 days after publication in the Federal Register.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the aforesaid provisions of §§ 1139.7(d) and 1139.13(d)(3) of the Great Basin milk order are hereby revised beginning with the month of June 1989.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority for 7 CFR Part 1139 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1139.7 [Amended]

2. In § 1139.7(d), the provision "40 percent" is revised to "35 percent" beginning with the month of June 1989.

§ 1139.13 [Amended]

3. In § 1139.13(d)(3), the words "60 percent in the months of April through August, and 50 percent in other months" is revised to "70 percent in the months of April through August, and 60 percent in other months" beginning with the month of June 1989.

Signed at Washington, DC, on: July 19, 1989.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 89-17309 Filed 7-24-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1945 and 1980

Final Implementation of Farmer Program Loan Provisions of the Disaster Assistance Act of 1988 (Pub. L. 100-387)

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts its interim rule published January 19, 1989 (54 FR 2083–2087), as a final rule without change. This action amends FmHA regulations by authorizing special disaster assistance to eligible farmers and ranchers who sustained severe production losses to their 1988 crop(s) as a result of widespread drought and other natural disasters. This action is necessary to finalize the interim rule, which implemented the provisions of the Disaster Assistance Act of 1988 (dated August 11, 1988), that was incorporated into existing FmHA regulations.

EFFECTIVE DATE: July 25, 1989.

ADDRESS: The Regulatory Impact Analysis Statement (RIA) is available for public inspection during regular working hours at the following address: Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Ave. SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Morris Monesson, Deputy Director, Farmer Programs Loan Making Division, USDA South Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1641.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12991, and was determined to be major because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

I have reviewed the regulations which the Farmers Home Administration (FmHA) is publishing as a final rule to implement sections 311, 312, and 313 of the Disaster Assistance Act of 1988, Pub. L. 100–387, 7 U.S.C. 1421 note, and have found that these regulations comply with that statute; and that FmHA has the authority to issue such regulations pursuant to section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Alan Charles Raul,

General Counsel.

Summary of RIA

The USDA has developed a Regulatory Impact Analysis (RIA), dated August 26, 1988, which was summarized in the interim rule, dated January 19, 1989. A study was done to document the cost of implementing this rule. The study showed that the regulatory revisions prescribed by law would increase Government costs by approximately $500 million. While one comment was received concerning the rule, it did not address the RIA. However, because participation in the program to date is lower than expected, FmHA is able to reduce the estimated cost of this program from $500 million to $100 million At the time the original cost projection was made—8 months ago—the full impact of disaster benefits provided through programs administered by the Agricultural Stabilization and Conservation Service (ASCS) could not be forecast. Since farmers and ranchers have taken advantage of the ASCS programs to the fullest extent possible, participation in FmHA's EM loan program is below

expectations. Thus, FmHA is able to reduce the amount of EM funds held for the implementation of this rule.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice, 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans and Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:
10.404—Emergency Loans.
10.406—Farm Operating Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

On January 19, 1989, FmHA published an Interim Rule amending 7 CFR Parts 1945–D and 1980–B in the Federal Register (54 FR 2083–2087) with a comment period ending February 21, 1989. The "Disaster Assistance Act of 1988," (Pub. L. 100–387), dated August 11, 1988, amended FmHA's statutory loan-making authorities. It was necessary to implement these authorities upon publication to provide immediate assistance to farmers and ranchers who had suffered major crop production losses as a result of severe drought and other natural disasters in 1988.

The Act mandates changes in the emergency loan regulations and the guaranteed operating loan regulations, which will temporarily ease the requirements for obtaining assistance under these programs. These changes are fully addressed in the interim rule. These regulations will provide assistance to many needy farmers and ranchers, who are or will be in danger of losing their operations without this assistance.

Discussion of Comments

One comment letter was received, that being from an FmHA County Supervisor. The letter addressed the concern that the interim rule does not require all applicants who receive EM loans based on 1988 production losses to purchase 1989 crop insurance. That requirement can be waived, if certain conditions exist. The comment stated that it would be cost effective for applicants to obtain crop insurance and receive insurance indemnity payments, rather than borrow to cover their losses. He also stated that Federal Crop Insurance should be required without exception. Since the statute requires the waiver of crop insurance for a 1989 crop/commodity when certain conditions exist. FmHA has no choice but to comply with the statute.

No comments were received on the Interim Rule concerning the revisions to guaranteed operating loan regulations.

List of Subjects

7 CFR Part 1945

Agriculture, Disaster assistance.

7 CFR Part 1980

Agriculture, Loan programs—agriculture.

Therefore, FmHA adopts its interim rule, dated January 10, 1989 (54 FR 2083–2087), as a final rule without change.

Date: June 23, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89–17310 Filed 7–24–89; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 39

Authorization To Use Sealed Sources in Well Logging

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of generic exemption.

SUMMARY: This notice exempts Nuclear Regulatory Commission (NRC) well logging licensees from the requirement to use only sealed sources that meet the prototype testing requirements specified in § 39.41(a)(3) of 10 CFR Part 39 in well logging operations. The exemption will apply only to sealed sources that meet certain alternate prototype testing criteria.

EFFECTIVE DATE: July 17, 1989.

ADDRESSES: Copies of the documents referred to in this notice may be examined at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: J. Bruce Carrico, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–0634.

SUPPLEMENTARY INFORMATION:

Background

In 1985, NRC published a proposed new Part 39 to its regulations that specified radiation safety and license requirements for the use of licensed material in well logging (see 50 FR 13797, published April 8, 1985). Section 39.41 of the proposed rule set forth design and performance criteria for sealed sources used in logging oil, gas, or other geophysical wells. (A sealed source is defined in 10 CFR 39.2 as any licensed material that is encased in a capsule designed to prevent leakage or escape of the licensed material.)

Proposed § 39.41 would have prohibited licensees from using a sealed source manufactured one year after the effective date of the final rule in well logging unless the manufacturer certified that the sealed source: (1) Is doubly encapsulated; (2) contains insoluble and non-dispersible (as practical) licensed material; (3) was individually pressure tested; and (4) was prototype performance tested for temperature, impact, vibration, and puncture. The prototype performance tests proposed in the rule were the same as the tests specified for well logging sources in American National Standard Institute (ANSI) N542–1977, "Sealed Radioactive Sources, Classification," published by the National Bureau of Standards (NBS Handbook 126) in 1978. Two years after the effective rule date, proposed § 39.41 also would have prohibited licensees from using a sealed source manufactured before one year after the effective date of the final rule unless the source was certified, by the manufacturer or a qualified testing organization, as meeting criteria (1), (2), and (3) above, or as meeting all of the above criteria through prototype testing.

NRC received several comments concerning proposed § 39.41. Some comments indicated that certain provisions of the regulation were too vague. Other comments noted that the ANSI N542–1977 standard only specified prototype pressure testing for well logging sealed sources, and questioned the need for pressure tests of individual

sources. In preparing the final rule, the staff rewrote § 39.41 to simplify the language and to recognize prototype pressure testing as a reasonable alternative to individual testing. The final rule prohibits licensees from using, after July 14, 1989, a sealed source in well logging unless the source is doubly encapsulated; contains licensed material whose chemical and physical forms are as insoluble and non-dispersible as practical; and is prototype performance tested and found to maintain its integrity after each of the following tests: temperature, impact, vibration, puncture, and pressure. (The prototype performance tests specified in the rule are the same as the tests specified in ANSI N542–1977.)

In making this change, the staff believed most sealed sources in use at the time already met these requirements. Also, the staff believed that the sealed source manufacturers would recertify many of the sealed source models which did not meet the proposed testing requirements. However, a number of the companies that manufactured these sources have been purchased by a company which has indicated that it does not wish to continue with the products or recertify prototype sources.

The Regulatory Dilemma

Recently it has been brought to NRC's attention that a large number of the sealed sources currently in use by the well logging industry do not appear to meet the prototype testing provisions of § 39.41, paragraph (a)(3). A review of sealed source registration sheets from NRC's Sealed Source and Device Registry indicates that many of the well logging source models were registered before publication of ANSI N542–1977. (The Sealed Source and Device Registry is a source of descriptive information about sealed sources and devices containing radioactive material, and is used by NRC in its licensing activities.) Because of the manufacturing ownership changes described above, it is doubtful that these sealed sources will be recertified.

An additional review of NRC's well logging licenses shows that a majority of the licenses authorize possession and use of sealed sources that do not meet § 39.41(a)(3) requirements. For many licenses, these may be the only sealed sources the licensee is authorized to possess and use. If licensees are required to comply with the requirements of § 39.41(a)(3) on its effective date (July 14, 1989), many licensees may have to severely curtail or even discontinue well logging operations, a result NRC did not anticipate or intend. Such well logging licensees may be forced out of business and have to dispose of the sources whose use would be discontinued. Radioactive waste disposal problems could be exacerbated by the large number of sources which may be involved.

Alternate Option

While NRC's review of registration sheets from the Sealed Source and Device Registry indicates that many well logging sealed source models were registered before publication of ANSI N542–1977, the majority of sheets also indicate that the sources were prototype tested in accordance with an earlier national standard [United States of America Standards Institute (USASI) N5.10–1968] that classifies radioactive sealed sources. In comparing the 1968 and 1977 national standards, NRC found three of the tests (temperature, pressure, and impact) to be very similar. The puncture testing technique is different in the two standards. In the 1968 standard, the actual force developed in the puncture test will vary depending upon the source mass. In the 1977 standard, the actual force developed is fixed. However, in comparing the forces, NRC calculations show that equal or greater force is developed using the earlier standard's testing technique (assuming no horizontal or other external components of force).

The last test, vibration, specified in the 1977 standard for well logging source classification and in § 39.41(a)(3) was not specified in the 1968 standard. However, information NRC has obtained indicates that, although a vibration test requirement was considered in 1968, the consensus was that the well logging sources had to be so ruggedly built in order to pass the other tests, there was no reason to include the vibration test. The information also indicates that the test was included in the 1977 standard simply to make the standard compatible with an existing international standard, and that it was included in the international standard only for consistency within the standard (e.g., the standard specified a vibration test for all other source types). NRC can find no evidence that source failure due to vibration damage was a reason for including the test in the standard.

Findings

NRC has examined the information it has available concerning sealed sources used in well logging operations and has made a determination that there is reason to believe that implementation of the subject requirement may not be in the public interest because of the large number of radioactive sealed sources whose use would have to be discontinued. NRC also believes that continued use of sealed source models which have been subjected to prototype testing in accordance with USASI N5.10–1968 would not adversely affect public health and safety. NRC notes that there have been almost no sealed source failures reported for this source category.

For these reasons, NRC believes it should reevaluate the requirements in § 39.41(a)(3) for prototype testing of sealed sources. During this reevaluation, NRC also believes it should allow use of those sealed source models which have been subjected to prototype testing in accordance with either USASI N5.10–1968 or the existing requirements in § 39.41(a)(3) (i.e., ANSI N542–1977). NRC notes that this does not relieve licensees from the requirement to comply with other NRC regulations, orders, or license conditions concerning possession or use of radioactive sealed sources in well logging.

Legal Basis

Sections 30.11 of 10 CFR Part 30 and 39.91 of 10 CFR Part 39 allow the Nuclear Regulatory Commission, on its own initiative, to grant exemptions from the requirements of Part 39 if they are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

This exemption is authorized by law because it is permitted under sections 57 and 81 of the Atomic Energy Act of 1954, as amended.

This exemption will not endanger life or property or the common defense and security because NRC has reviewed the radiation safety issues related to the use of sealed sources in well logging and believes that sealed source models which have been subjected to prototype testing in accordance with USASI N5.10–1968 are adequate to assure public health and safety.

This exemption is in the public interest because it will allow well logging companies to continue to use a large number of sealed sources whose use otherwise would have to be discontinued, an impact NRC did not intend.

Scope, Effective Date, and Expiration of Generic Exemption

Effective on July 17, 1989 and until NRC publishes its final findings in the **Federal Register** regarding design and performance criteria for sealed sources, NRC licensees that are authorized to use sealed sources in well logging are

exempted from the requirements of 10 CFR 39.41(a)(3) when using sealed sources that have been subjected to prototype testing in accordance with USASI N5.10–1968.

Dated at Rockville, MD this 17th day of July, 1989.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–17364 Filed 7–24–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ANE–38; Amdt. 39–6274]

Airworthiness Directives; Pratt & Whitney Canada (PWC) JT15D–4B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S owners and operators of certain PWC JT15D–4B turbofan engines by individual priority letters. The AD requires borescope inspections of the high turbine assembly and removal from service of those high turbine assemblies with evidence of forward blade movement. The AD is needed to prevent high turbine assembly failures on certain JT15D–4B engines as a result of possible blade release due to blade shifting.

DATES: Effective September 1, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88–22–03, issued on October 21, 1988, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information letter (SIL) may be obtained from Pratt & Whitney Canada, 1000 Marie Victorin, Longueuil, Quebec, Canada J4G 1A1, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Diane M. Cook, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7062.

SUPPLEMENTARY INFORMATION: On October 21, 1988, Priority Letter AD 88–22–03 was issued and made effective immediately as to all known U.S. owners and operators of PWC JT15D–4B turbofan engines. The Priority Letter AD requires initial and repetitive borescope inspections of JT15D–4B turbofan engine high turbine assemblies which have not reached their scheduled initial hot section inspection (HSI). If the inspection reveals forward blade movement in excess of the 0.020 inch limit, the high turbine assembly must be removed and replaced prior to further flight. Upon completing an HSI, repetitive inspections are no longer required. There have been five contained events on JT15D–4B high turbine assembly failures resulting from high turbine blade shifting. Three of these five events had engine serial numbers in consecutive order. There have also been several instances of blade platform axial movement in excess of the JT15D–4B Maintenance Manual limit found during scheduled HSI from engines prior to S/N PC–E102280. Investigation continues to determine the cause of blade shifting on engines prior to S/N PCE 102280. AD action is necessary to prevent excessive axial movement of the high turbine blade platform which may result in the release of the blade and failure of the high turbine assembly.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by priority letter, issued October 21, 1988, as to all known U.S. owners and operators of certain JT15D–4B turbofan engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) JT15D–4B series turbofan engines prior to Serial Number (S/N) PC–E 102280.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the high turbine assembly due to high turbine blade shifting, accomplish the following:

(a) For JT15D–4B engines which have not reached their scheduled initial HSI on the effective date of this AD, borescope inspect in accordance with the instructions in Appendix I of this AD, as follows:

(1) Engines which have accumulated greater than 585 hours time since new (TSN) on the effective date of this AD, initially inspect within 15 operating hours from the effective date of this AD, or within 10 calendar days from the effective date of this AD, whichever occurs first.

(2) Engines which have accumulated 585 hours TSN or less on the effective date of this

AD, initially inspect prior to accumulating 600 hours TSN.

(3) Reinspect at intervals not to exceed 300 hours time in service since initial inspection until the initial HSI is completed, or until the high turbine assembly is replaced with a serviceable assembly, from which time no further borescope inspections are required.

(4) Remove from service, prior to further flight, and replace with a serviceable assembly those high turbine assemblies with evidence of forward blade movement in excess of the 0.020 inch limit.

Note: Serviceable assemblies include high turbine assemblies removed from engines prior to S/N PC–E 102280 which have completed an HSI, or that portion of the HSI requiring deblading and re-riveting the turbine assembly in accordance with the JT15D Overhaul Manual.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Inspections shall be accomplished in accordance with the instructions in Appendix I of this AD.

This amendment becomes effective September 1, 1989, as to all persons except those persons to whom it was made immediately effective by individual Priority Letter AD 88–22–03, issued October 27, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on July 12, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Appendix I

Note: Pratt & Whitney Canada Service Information Letter 7027, dated October 7, 1988, pertains to these instructions.

Appendix I—Pratt & Whitney Canada, Service Information Letter (SIL) No. 7027, Dated October 7, 1988.

JT15D–4B Engines (Prior to S/N PC–E 102280)

Requirements

For JT15D–4B engines which have not reached their scheduled Hot Section Inspection (HSI) interval, borescope inspections are required per the following schedule:

1. Initial inspection to be carried out at 600 hours Time Since New (TSN). For those engines post 600 hours TSN and pre-HSI, initial inspection to be carried out within 25 hours of operation or 30 days from the date of issue of this S.I.L., whichever is reached first.

2. Repeat inspections shall be carried out at 300 hour intervals.

3. Following Hot Section Inspection, no further borescope inspections are necessary.

Disposition

If evidence of forward blade movement in excess of the .020" limit described in the Maintenance Manual is found, the high turbine assembly shall be removed and returned to an authorized repair facility for re-riveting.

In the event of re-riveting being required, it is advised that the engine be disassembled sufficiently to remove the high turbine only. Removal of the low turbine stator support assembly, high turbine vane or associated components should be avoided—any parts exposed may be inspected in-situ.

Borescope Procedure

It has been found that, with care, a 6mm flexible borescope can be passed between the blades of the low turbine assembly (5mm is considerably easier), hence allowing access to the rear of the high turbine blades. With the borescope in position, the high rotor can be rotated via the accessory gearbox starter/generator drive shaft. This procedure will allow a suitable view of all high turbine blade platforms. The extent of blade shift may be estimated by comparing with the pitch of the blade fixing serrations. The serration to serration pitch is .090 inches.

[FR Doc. 89–17245 Filed 7–24–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ANE–04; Amdt. 39–6270]

Airworthiness Directives; Pratt & Whitney (PW) PW4152 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Pratt & Whitney (PW) PW4152 engines installed in Airbus Industrie A310–300 series aircraft by individual telegrams. The AD requires initial and repetitive replacement of the fuel metering unit (FMU) with new or serviceable units. The AD is needed to prevent the inability to reduce engine thrust caused by angular separation between the sector gears and metering valve feedback shaft in the FMU which could result in asymmetrical power and possible aircraft directional control problems.

DATES: Effective September 1, 1989, as to all persons except those to whom it was made immediately effective by individual telegrams issued February 3, 1988, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable engine manufacturer's alert service bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Kirk E. Gustafson, Engine Certification Branch, ANE–141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7095.

SUPPLEMENTARY INFORMATION: On February 3, 1988, TAD No. T88–03–53, was issued and made effective immediately as to all known U.S. owners and operators of certain PW4152 engines installed in Airbus Industrie A310–300 series aircraft by individual telegrams. The AD requires initial and repetitive replacement of the FMU with new or serviceable units, at intervals not to exceed 150 FMU operating hours. AD action was necessary to prevent the inability to reduce engine thrust caused by angular separation between the sector gears and metering valve feedback shaft in the FMU. There has been one event where excessive wear in the FMU resolver pinion and sector gears has caused temporary seizure of the gears and angular separation to occur between the sector gears and metering valve feedback shaft. Angular separation between the sector gears and metering valve feedback shaft induces an understated full flow signal to the electronic engine control (EEC). The understated fuel flow signal to the EEC results in convergence of the engine operating line and minimum ratio units fuel schedule controlled by the EEC, thereby precluding subsequent power reduction. In a recent service incident, during landing roll, engine power could not be reduced after the reversers were stowed, thereby causing an asymmetric thrust condition and aircraft directional control problems during the subsequent rollout.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams issued February 3, 1988, to all known U.S. owners and operators of certain PW4152 engines

installed in Airbus Industrie A310–300 series aircraft. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney (PW) PW4152 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent the inability to reduce engine thrust that can lead to asymmetrical power and possible aircraft directional control problems, accomplish the following:

(a) For fuel metering units (FMU), Part Number (P/N) 51T217 or 53T419, with 140 operating hours or greater on the effective date of this Airworthiness Directive (AD), since new or since refurbished with new sector gears and a new or reconditioned resolver pinion gear, accomplish the following:

Remove and replace the FMU with a new or serviceable unit in accordance with the instructions in Appendix I of this AD within 10 operating hours after the effective date of this AD.

(b) For FMU's, P/N 51T217 or 53T419, with less than 140 operating hours on the effective date of this AD, since new or since refurbished with new sector gears and a new or reconditioned resolver pinion gear, accomplish the following:

Remove and replace the FMU with a new or serviceable unit in accordance with the instructions in Appendix I of this AD on or before accumulating 150 operating hours since new or since refurbished with new sector gears and a new or reconditioned resolver pinion gear.

(c) Thereafter, remove the FMU, P/N 51T217 or 53T419, and install a new or serviceable unit in accordance with the instructions in Appendix I of this AD at intervals not to exceed 150 FMU operating hours in service.

Note: PW ASB Number PW4ENG A73–37, Revision I, dated January 26, 1988, further recommends removal and replacement of the FMU whenever the engine parameters indicate an impending hot start or excessive ground idle rotor speed (N2 in excess of 68 percent at normal bleed air extraction). FMU removal and replacement due to these operating characteristics are not mandated by this AD at this time.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The FMU replacement shall be done in accordance with the instructions in Appendix I of this AD.

This amendment becomes effective on September 1, 1989, as to all persons except those persons to whom it was made immediately effective by individual Telegraphic AD T88–03–53, issued February 3, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on July 11, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Note: Pratt & Whitney Alert Service Bulletin Number PW4ENG A73–37, Revision I, dated January 26, 1988, pertains to these instructions.

Appendix I—Pratt & Whitney Alert Service Bulletin No. PW4ENG A73–37, Revision No. 1, Dated January 26, 1988

References

(1) Turbojet Engine Standard Practices Manual, Part No. 585005.

(2) All Operator Wire PW4000/73–00/PSE:CS:RCS:7–12–9–1.

(3) All Operator Wire PW4000/73–00/PSE:RCS:8–1–13–1.

(4) PW4152 and PW4156 Turbofan Engines, Illustrated Parts Catalog, Part No. 50A445.

(5) PW4056 Turbofan Engines Illustrated Parts Catalog, Part No. 50A607.

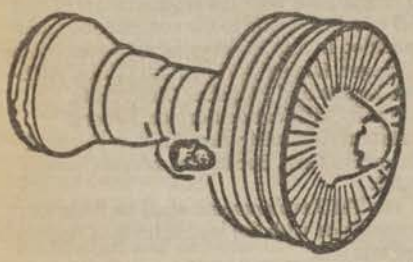
(6) A310 AMM Chapter/Section 73–23–00 Fuel Metering Unit Removal/Installation.

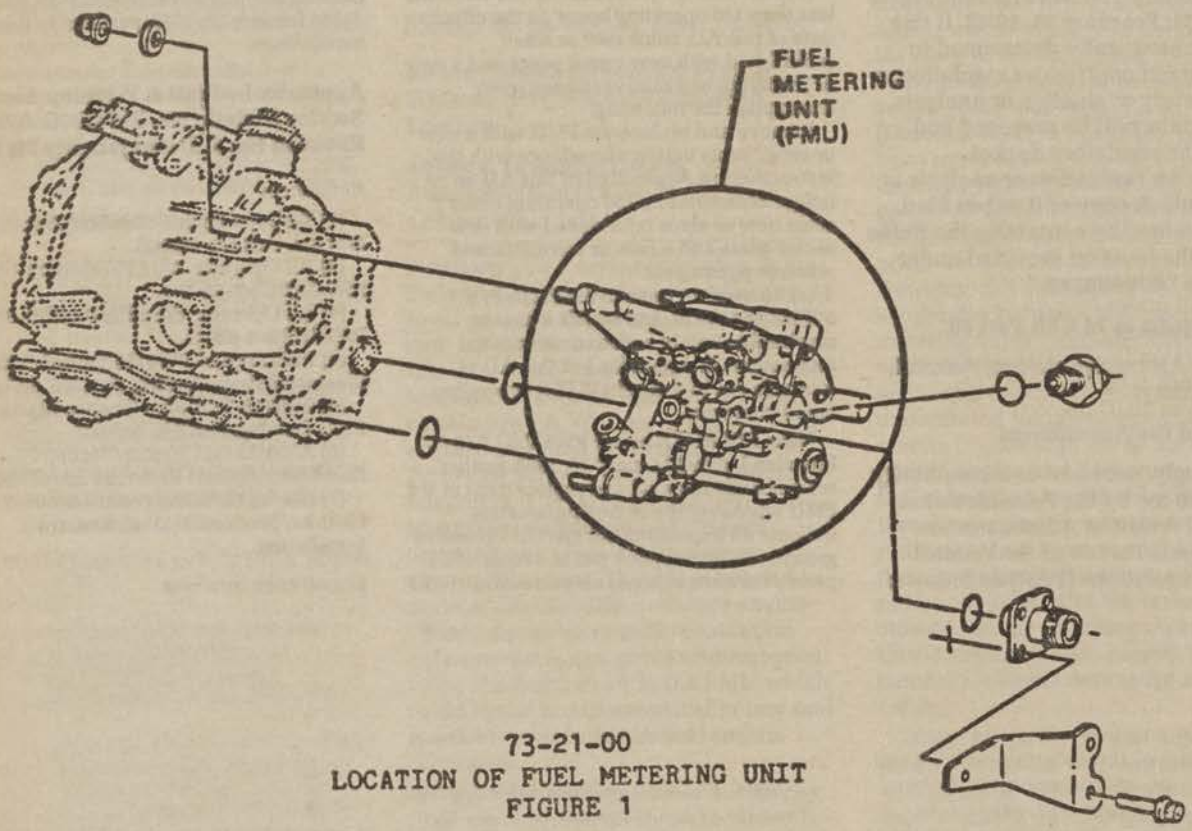
(7) Boeing 767 Maintenance Manual Chapter/Section 73–21–01 Removal/Installation.

BILLING CODE 4910–13–M

Accomplishment Instructions:

A. Replace Fuel Metering Unit, PN 51T217 (HSD789777-1L5/500/501), or PN 53T419 (HSD789777-2L3,-2L4,-2L5), with new acceptable units of same part number. See Figure 1.





73-21-00
LOCATION OF FUEL METERING UNIT
FIGURE 1

[FR Doc. 89-17244 Filed 7-24-89; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-89-1449; FR-2679]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been lowered from 10.00 percent to 9.50 percent.

Until recently, HUD regulated interest rates not only for the section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act . However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the section 235 Program. The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR Part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before July 17, 1989, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after July 17, 1989, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Date: July 17, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing.

[FR Doc. 89-17373 Filed 7-24-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-89-56]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of the City of Chesapeake, the Coast Guard is issuing a temporary rule governing the operation of the Centerville Turnpike drawbridge across the Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake, Virginia. This rule is being issued to limit bridge openings 24-hours a day, seven days a week, in order to reduce unnecessary wear and tear on the structure while still providing for the reasonable needs of navigation. Because of the length of time this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be changed based on comments received.

DATES: This temporary rule is effective from July 21, 1989, through December 31, 1989, unless amended or terminated before that date. Comments on the temporary rule must be received on or before August 21, 1989.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at Room 507 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgment that their coments have been received should enclose a stamped, self-addressed postcard or envelope.

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Temporary Rule

At the request of the City of Chesapeake, owner of the drawbridge in Chesapeake, Virginia, the Coast Guard is issuing a temporary rule governing the operation of the drawbridge across the Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake. The City of Chesapeake has indicated that restricting bridge openings 24-hours a day to open once every 2 hours, on the even hours, seven days a week, from July 21, 1989, to December 31, 1989, will be necessary in order to eliminate any more wear and tear on the structure until rehabilitation work begins. During the past several months, the Centerville Turnpike Bridge has experienced operational problems due to shifting of the structure causing the bridge to become stuck between the open and closed positions. In the past, similar problems have necessitated closure of the drawbridge for emergency repair work for periods of six days, and the City believes that if drawbridge openings are not restricted, the worsening condition of the bridge may accelerate to the point that the draw becomes inoperable or that shifting causes an accident or injury. The City of Chesapeake is working with the Virginia Department of Transportation to expedite a rehabilitation contract that will enable them to repair all structural damage. The rehabilitation work is anticipated to begin some time in December 1989.

Presently, the drawbridge opens on the hour and half-hour, from 7:00 a.m. to 7:00 p.m., seven days a week, year-round, and from 7:00 p.m. to 7:00 a.m., the draw opens on demand seven days a week, year-round.

Since this temporary schedule is necessary to the safety of the bridge, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification.

This temporary rule is not considered major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact on these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended to read as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. A new § 117.996 is temporarily added to read as follows:

§ 117.996 Albemarle and Chesapeake Canal.

The draw of the S.R. 170 bridge, mile 15.2, at Chesapeake, shall open once every two hours, on the even hours, from July 21, 1989, to December 31, 1989, for vessels waiting to pass.

3. This rule is effective from July 21, 1989, to December 31, 1989, unless amended or terminated before that date.

Dated: July 13, 1989.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 89-17359 Filed 7-24-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3573-1; FL-023]

Approval and Promulgation of Implementation Plans; Florida; Approval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) which were submitted by the Florida Department of Environmental Regulation (FDER) on November 19, 1986, and June 12, 1987. EPA is deferring action on the revisions to Rule 17-2.210(2) (Air Operating Permits), since EPA currently is considering whether to issue regulations or guidance for evaluating operating permit programs. Also, EPA is taking no action on the revisions to Rules 17-2.660 (Standards of Performance for New Stationary Sources (NSPS)) and 17-2.670 (National Emission Standards for Hazardous Air Pollutants (NESHAP)) since NSPS and NESHAP regulations are not required by section 110 of the Clean Air Act to be part of the State's SIP. Several other revisions which were submitted in this package will be acted upon in separate notices. These revisions are as follows: 17-2.510, 17-2.600(4)(a), 17-2.700(6)(b)16., 17-2.700 Table I, and 17-2.710(3)(b)1.d.

This submittal amends regulations contained in the Florida Administrative Code (FAC), Chapter 17-2 (Air Pollution), and will incorporate Rule 17-103.150 (Public Notice of Application and Proposed Agency Action) as part of the SIP. These revisions include: the addition of a new definition and revisions to others; the revision of the primary units of the carbon monoxide ambient air quality standard to parts per million instead of milligrams per cubic meter; revision of the method for calculating prevention of significant deterioration (PSD) increment consumption to conform to current EPA policy; relabelling of the tables in Rule 17-2.700; addition of provisions for air curtain incinerators; minor PSD rule revisions; revision of public notice provisions; minor revisions regarding permitting; and addition of new testing provisions for sources on cold standby or temporary shutdown. These regulation changes are minor in nature and serve merely to update the Florida regulations.

DATES: This action will be effective on August 24, 1989.

ADDRESSES: Copies of the material submitted by Florida may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On November 19, 1986, and June 12, 1987, the FDER submitted to EPA for approval revisions to the Florida SIP, and EPA is today approving a number of them. This submittal contained certification that the revisions were preceded by adequate notice and public hearing. The revisions submitted by FDER on November 19, 1986, and June 12, 1987, were discussed in detail in the April 27, 1988, proposal notice (53 FR 15064). For simplicity, only those portions of the submittals which EPA is not taking action on, or the ones that will be acted on at a later date will be discussed again here. They are as follows:

- Rule 17-2.210(2) (Air Operating Permits) was amended in several places. However, EPA is deferring action on these provisions since EPA currently is considering whether to issue regulations or guidance which specify the requirements for an approvable operating permit program. EPA will take action to approve or disapprove the provisions upon completion of these deliberations.
- Rule 17-2.510 (New Source Review for nonattainment Areas) was revised as part of this submittal. However, the revisions to this regulation will be incorporated in a later notice which will discuss the approvability of the entire rule, which up until this time has not been proposed for approval. The entire rule's approval had been on hold pending an EPA policy decision regarding the use of a plantwide definition of a source. EPA has now outlined procedures for approving regulations which will use the plantwide definition of a source, and is presently working with FDER to correct problems with the State's current regulation.
- Rule 17-2.600(4)(a) (Visible Emissions) was amended to establish a visible emissions standard for Kraft recovery furnaces equipped with dry collectors. This provision will be discussed in a separate notice.
- Rule 17-2.700 (Stationary Point Source Emissions Test Procedures) was amended in several places. In section (6)(b)16. (EPA Test Procedures) and 17-2.700 Table I (Applicable Test Procedures for Point Source Compliance Tests), FDER made amendments to include EPA Method 16A as a test method for determination of total reduced sulfur (TRS) emissions from stationary sources. These revisions will be processed in a separate notice.
- Rule 17-2.710(3)(b)1.d. (Continuous determination of total reduced sulfur emissions from stationary sources) was amended to include EPA Method 16A as a test method for determination of TRS emissions. This revision will be processed in a separate notice.

For a detailed discussion of the revisions EPA is acting on, please refer to the April 27, 1988, proposal notice. Further details pertaining to these regulation changes are contained in the Technical Support Document. These documents are available for public inspection at EPA's Regional Office in Atlanta, Georgia.

On April 27, 1988 (53 FR 15064), EPA proposed to approve the revisions to Florida Administrative Code Chapter 17-2 (Air Pollution). At that time, the public was invited to submit written comments on the proposed action. However, no comments were received.

Final Action

EPA is approving certain of the regulation changes which were submitted to EPA on November 19, 1986, and June 12, 1987, as detailed in the April 27, 1988, proposal notice. EPA is deferring action on the revision to Rule 17-2.210(2) (Air Operating Permits), since EPA currently is considering whether to issue regulations or guidance for evaluating operating permit programs. EPA is taking no action on the revisions to Rules 17-2.660 (Standards of Performance for New Stationary Sources (NSPS)) and 17-2.670 (National Emission Standards for Hazardous Air Pollutants (NESHAP)) since NSPS and NESHAP regulations are not required by section 110 of the Clean Air Act to be part of the State's SIP. Also, EPA will act on the revisions to Rules 17-2.510,

17-2.600(4)(a), 17-2.700(6)(b), 17-2.700 Table I, and 17-2.710(3)(b)1.d., in a separate notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 25, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Date: May 12, 1989.

William K. Reilly,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart K—Florida

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.520 is amended by adding paragraph (c)(65) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(65) Changes to the Florida Administrative Code (FAC), Chapter 17-2, submitted to EPA on November 19, 1986, and June 12, 1987, by the Florida Department of Environmental Regulations.

(i) Incorporation by reference.

(A) November 19, 1986, and June 12, 1987, letters from the Florida Department of Environmental Regulation.

(B) Amendments to Florida Administrative Code Rules 17-2.100(6), (21) and (118); 17-2.210 introductory text, (1) and (3)(r); 17-2.220(1), (2)(a)-(h); 17-2.300(3)(c)1. and (3)(c)2.; 17-2.310 introductory text; 17-2.450(1)(a) and (2)(a); 17-2.500(2)(e)4.a. (i) and (ii), (4)(a)1.a. and (4)(b)1.; 17-2.600(1)(d); and 17-2.700(2)(a)3.; Tables 500-1, 500-2, 500-3, Table 700-1 and Table 700-2. These revisions were adopted on July 1, 1983, and September 30, 1986, by the Florida Department of Environmental Regulation.

(ii) Additional material—none.

[FR Doc. 89-17350 Filed 7-24-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-38

[FPMR Amdt. G-91]

Transportation and Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: Executive Orders 11912 and 12375 require the General Services Administration (GSA) to administer a consolidated plan to ensure that executive agencies will acquire fuel efficient vehicles. This regulation deletes the requirement to submit forecasts of total passenger automobile and light truck lease and purchase requirements to GSA. Actual vehicle leases and agency vehicle purchases not procured through the GSA Automotive Commodity Center will continue to be reported to GSA, ATTN: FBF, Washington, DC 20406. This action is intended to reduce the paperwork associated with agency compliance with Executive Orders 11912 and 12375.

On October 6, 1988, the National Highway Traffic Safety Administration, Department of Transportation, published fleet average fuel economy objectives for fiscal years 1989 through 1991. This regulation adds those objectives to the Federal Property Management Regulations.

Agencies satisfy their motor vehicle requirements by requisitioning them through the GSA Automotive Commodity Center using Federal specifications. Sedans, station wagons, and light trucks also have Federal standards which facilitate volume purchasing. The GSA Automotive Commodity Center has developed and issued Federal standard 794 covering medium trucks. This regulation provides for the use of Federal standard 794, where appropriate, in addition to Federal standards 122, 292, and 307.

Comptroller General decisions indicate that Government employees are personally responsible for fines imposed by State and local courts for the violation of motor vehicle traffic laws. This regulation adds these determinations to the Federal Property Management Regulations.

Many States have raised the maximum speed limit for motor vehicles from 55 mph to 65 mph. This regulation instructs Federal motor vehicle operators to obey posted speed limits at all times.

EFFECTIVE DATE: July 25, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael W. Moses, Sr., Fleet Management Division (703-557-1273).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse affects. The General Services Administration (GSA) has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-38

Motor equipment management.

PART 101-38—MOTOR EQUIPMENT MANAGEMENT

1. The authority citation for Part 101-38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The table of contents for Part 101-38 is amended by adding the following entry:

Sec.

101-38.301-3 Violation of State and local motor vehicle traffic laws.

Subpart 101-38.1—Motor Vehicle Acquisitions

3. Section 101-38.101-3 is amended by revising paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

§ 101-38.101-3 Acquisition of fuel efficient passenger automobiles and light trucks

* * * * *

(b) * * *

(1) In compliance with Executive Orders 11912 and 12375, GSA administers a consolidated Federal fleet program to monitor passenger automobiles and light trucks acquired by executive agencies. The program is based upon the actual vehicle leases

and purchases of passenger automobiles and light trucks, reported by vehicle class, by executive agencies to GSA. GSA administers the program by maintaining a master record of the miles per gallon ratings for passenger automobiles and light trucks actually acquired by each agency during the fiscal year. The GSA program will be used to verify that each agency's vehicle leases and purchases conform with Executive Order 12375; i.e., the agency will achieve the fleet average fuel economy for the applicable fiscal year.

(2) The Federal fleet program enables GSA to determine the total fleet average fuel economy achieved by all executive agencies at the end of each fiscal year and to provide management assistance to agencies to ensure compliance with Executive Order 12375. Copies or synopses of actual vehicle leases and vehicle purchases not procured through the GSA Automotive Commodity Center shall be forwarded to the General Services Administration, ATTN: FBF, Washington, DC 20406, not later than December 1st of each year, in accordance with the requirements set forth in § 101–38.102.

(3) Passenger automobiles and light trucks acquired by executive agencies must meet the fleet average fuel economy objectives set forth below for the appropriate fiscal year:

Fiscal year	Average [1] fuel economy standard	Miles per gallon		
		Passenger automobiles	Light trucks	
			Fleet average fuel [2] economu 4 X 2	Fleet average fuel [2] 4 X 4
1977	18.0	18.0		
1978	18.0	20.0		
1979	19.0	22.0	17.2	15.8
1980	20.0	24.0	16.0	14.0
1981	22.0	26.0	16.7	15.0
1982	24.0	24.0	18.0	16.0
1983	26.0	26.0	19.5	17.5
1984	27.0	27.0	20.3	18.5
1985	27.5	27.5	19.7	18.9
1986	26.0	26.0	20.5	19.5
1987	26.0	26.0	21.0	19.5
1988	26.0	26.0	21.0	19.5
1989	26.5	26.5	21.5	19.0
1990	27.5	27.5	20.5	19.0
1991	27.5	27.5	20.7	19.1
1992 and beyond	27.5	27.5	[3]	[3]

[1] Established by section 502 of the Motor Vehicle Information and Cost Savings Act (89 Stat. 902, 15 U.S.C. 2002) and the Secretary of Transportation.
[2] Established by the Secretary of Transportation and mandated by Executive Order 12003 through fiscal year 1981 and by Executive Order 12375 beginning in fiscal year 1982.
[3] Requirements not yet established by the Secretary of Transportation.

4. Section 101–38.102 is amended by revising the section heading, by revising paragraphs (a), (b), (c), (d), and (h), and by adding paragraph (i) to read as follows:

§ 101–38.102 Agency purchase and lease of motor vehicles.

(a) Executive agencies that comply with the provisions of § 101–26.501–1 (b) and (c) may acquire vehicles without using the services of the GSA Automotive Commodity Center. Copies of actual vehicle leases and purchases acquired for domestic fleets which are not procured through the GSA Automotive Commodity Center will be furnished to the General Services Administration, ATTN: FBF, Washington, DC 20406. Each submission shall use the unadjusted combined city/highway mileage ratings for passenger automobiles and light trucks developed by the Environmental Protection Agency (EPA) for each fiscal year. The submissions shall be forwarded to GSA as soon as possible after the purchase or effective date of the lease. All submissions for the previous fiscal year shall reach GSA by December 1st of each year. GSA issues information concerning the EPA mileage ratings and miles per gallon rating guidance to assist agencies in the timely planning of their acquisitions. Agencies not intending to purchase or lease vehicles or agencies that satisfy their total motor vehicle requirements through the GSA Interagency Fleet Management System shall so inform GSA.

(b) The submission of actual vehicle leases and agency purchases or synopses for passenger automobiles and light trucks acquired during the fiscal year includes vehicles which were procured or leased for use in any State or Commonwealth of the United States and the District of Columbia. Agencies shall not include passenger automobiles and light trucks which are:

(1) Procured or leased for use outside the foregoing areas;

(2) Designed to perform combat-related missions for the U.S. Armed Forces; or

(3) Designed for use in law enforcement or emergency rescue work.

(c) Requisitions for passenger automobiles and light trucks sent to GSA for procurement action, but for which a contract is not awarded during the same fiscal year the requisitions are submitted, shall be included in the agency's vehicle lease and purchase record for the fiscal year in which the contract is awarded.

(d) When a vehicle lease contains an option to renew and the option is exercised, that renewal action shall not be included as a new acquisition. However, before the exercise of the renewal option, an agency must submit its requirements to GSA in accordance with § 101–39.204 to determine if the requirement can be satisfied through the Interagency Fleet Management System.

* * * * *

(h) Agencies may request GSA assistance when planning their acquisitions by contacting the General Services Administration, ATTN: FBF, Washington, DC 20406.

(i) Information concerning vehicles purchased for agencies by the GSA Automotive Commodity Center is provided internally; therefore, vehicles procured by GSA are not required to be reported.

5. Section 101–38.104–1 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 101–38.104–1 Purchase of new motor vehicles.

(a) Purchase of new sedans, station wagons, and light and medium trucks other than those to be used for law enforcement, shall be limited to standard vehicles (unless other than standard vehicles are specifically required) as follows: Sedans, class IB—subcompact, or class II—compact; station wagons, class II—compact, as described in Federal standard 122; light trucks as defined in Federal standards 292 and 307; and medium trucks as defined in Federal standard 794. (Federal standards 122, 292, 307, and 794, as used in this section, mean the latest editions.) Medium and heavy trucks will be purchased according to the provisions of § 101–26.5. Requisitions submitted to GSA for motor vehicles shall be in conformance with the requirements of § 101–38.101.

* * * * *

6. Section 101–38.104–3 is revised to read as follows:

§ 101–38.104–3 Consolidated purchase program.

(a) To achieve maximum benefits and economies, GSA (except as noted in § 101–26.501–1(a)), makes consolidated procurement of all motor vehicle types each year as follows:

(1) Two volume procurements of sedans and station wagons of the types covered by Federal standard 122, excluding family buys;

(2) Two volume procurements of the types covered by Federal standards 292 and 307, excluding family buys; and

(3) Three volume procurements of the types covered by Federal standard 794 and Federal specifications KKK–T–2107, 2108, 2109, 2110, 2111, and KKK–B–1579.

(b) Volume consolidated purchases are made after consolidation of requirements in accordance with the date set forth in § 101–26.501–4(a). Agencies should submit their requirements for the types of vehicles covered by Federal standards 122, 292, 307, and 794 and Federal specifications KKK–T–2107, 2108, 2109, 2110, 2111, and KKK–B–1579 that can be competitively procured, to the General Services Administration Automotive Commodity Center (FCA), Washington, DC 20406, in time for inclusion in the appropriate consolidated purchase as scheduled in § 101–26.501–4(a).

(c) When justified as indicated in § 101–26.501–4, requirements for sedans, station wagons, and light, medium, and heavy trucks will be consolidated and procured on a monthly basis.

(d) Requirements for sedans, station wagons, and light and medium trucks not covered by Federal standards 122, 292, 307, or 794 shall conform with the provisions of § 101–26.501–3 (a), (b), and (c).

7. Section 101–38.104–4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–38.104–4 Submission of requisitions and delivery orders.

* * * * *

(a) Requisitions covering vehicle types not included in Federal standards 122, 292, 307, 794, in a military specification, or in an agency specification on file with GSA, shall contain a complete description of the vehicles required, the intended use of the vehicles, and terrain where the vehicles will be used.

(b) Requisitions for vehicles covered by Federal standards 122, 292, 307, or 794 for which deviations from such Federal standards are required, unless already waived by the GSA, Automotive Commodity Center (FCA), shall include with the requisition a justification supporting each deviation from the Federal standards and shall contain a statement of the intended use of the vehicles, including a description of the terrain where the vehicles will be used. Prior approval of deviations shall be indicated on the requisition by citing the waiver authorization number.

* * * * *

8. Section 101–38.104–6 is revised to read as follows:

§ 101–38.104–6 Procurement time schedules.

(a) *Volume consolidated purchases.* Requisitions covering vehicle types included in Federal standards 122, 292, 307, and 794, Federal specifications KKK–T–2107, 2108, 2109, 2110, 2111, and KKK–B–1579 will be consolidated for volume procurement unless a statement is included justifying the need for delivery other than the delivery times indicated in this section. Requisitions containing a statement of justification will be handled on a monthly basis in accordance with this section, or on an emergency basis in accordance with § 101–26.501–4(c).

SCHEDULE FOR VOLUME CONSOLIDATIONS

Vehicle category	Consolidation dates
A. Sedans and station wagons of types covered by Federal standard 122.	June 1 to Nov. 15, Nov. 16 to May 31.
B. Light trucks of types covered by Federal standards 292 and 307.	June 16 to Dec. 1,[1] Dec. 2 to June 15.
C. Medium and heavy trucks in accordance with Federal standard 794 and Federal specifications KKK–T–2107, 2108, 2109, 2110, 2111, and KKK–B–1579.	March 10 to Aug. 9,[1] Aug. 10 to Dec. 15, Dec. 16 to March 9.

[1] Agencies are cautioned that a solicitation covering requisitions for sedans and station wagons and light trucks received during this consolidation period will be issued only if bids can be obtained. Otherwise, such requisitions will be held for inclusion in the next volume consolidated procurement. Note: See § 101–26.501–4 for vehicle volume consolidation time schedules for medium and heavy duty trucks.

(b) *Monthly consolidated purchases.* (1) Requirements for vehicles to be included in monthly consolidated purchases must be received by the General Services Administration, Automotive Commodity Center (FCA), Washington, DC 20406 by the dates indicated in the schedule set forth below. Requirements received after these dates will be carried over to the following month's purchase. In the interest of timely and orderly preparation of solicitations, ordering agencies are urged to submit each requirement as soon as it is finalized instead of holding it for submission with later requirements. Such requisitions need not specify a delivery date since delivery will be made in accordance with delivery times indicated in § 101–26.501–4(d). Requests for special handling for other than strictly emergency requirements shall not be submitted.

SCHEDULE FOR MONTHLY CONSOLIDATIONS

Vehicle category	Consolidation dates
A. Passenger carrying vehicles and light trucks of types not covered by Federal standards 122, 292, or 307, and ambulances.	20th of each month.
B. Buses, trucks (other than light trucks in category (A) above), and trailers of not less than 5,000 lbs.	Last day of each month.
C. All other categories and types of vehicles.	Last day of each month.

(2) Solicitations issued in July for the consolidated purchase of vehicles will cover only the requirements of those executive agencies with requisitions required by § 101–26.501–1 to be placed with GSA. (Submission of requirements

for vehicles in categories A, B, and C above, is mandatory to the extent provided in § 101–26.501–1.)

(c) *Emergency requirements.* Emergency requirements will receive special handling only when the requisitions are accompanied by adequate justification for individual purchase actions. Every effort will be made to meet the delivery dates specified in the requisitions.

(d) *Delivery time.* Delivery times for motor vehicle requirements submitted for monthly consolidated and volume consolidated purchases will normally range from 210 to 330 days after final dates for consolidation of requisitions provided in § 101–26.501–4 (a) and (b)(1). Included in delivery time estimates are 90 to 105 days required for soliciting and receiving bids, 30 to 45 days for evaluation and award of contracts, and 90 to 180 days from date of award for delivery of vehicles to the consigned locations. For buses, ambulances, and other special duty vehicles procured under monthly consolidated purchases, 240 to 270 days from date of award are usually required to effect delivery. However, special purpose vehicles with unique characteristics, such as certain types of firetrucks, may require longer delivery times. In such instances, every effort will be made by GSA to facilitate deliveries and keep the requisitioning agencies informed of any unanticipated delay.

Subpart 101–38.3—Official Use of Government Motor Vehicles

9. Section 101–38.301–3 is added to read as follows:

§ 101–38.301–3 Violation of State and local motor vehicle traffic laws.

Operators of Government-owned or -leased motor vehicles shall become familiar with and obey all motor vehicle traffic laws of the State(s) and local jurisdictions in which they operate. Violation of State or local motor vehicle traffic laws can result in fines and/or imprisonment of the motor vehicle operator.

(a) Fines imposed on a Government employee for an offense committed by him or her while in the performance of, but not as a part of, the employee's official duties are imposed on the employee personally and payment thereof is his or her personal responsibility. This includes fines for parking violations while operating a Government-owned or -leased motor vehicle. However, reimbursement of parking fees is normally allowed when the fees are incurred by Federal employees in the performance of their official duties.

(b) Except when the scope of their employment dictates otherwise, operators of Government motor vehicles shall obey posted speed limits. Operators will also be cognizant of the effects that weather and traffic conditions have on travel speeds.

Dated: July 10, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–17336 Filed 7–24–89; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[General Docket No. 85–388; FCC 89–186]

Applications To Serve Rural Service Areas

AGENCY: Federal Communications Commssion.

ACTION: Final rule; reconsideration and clarification.

SUMMARY: In the *Order on Reconsideration of Second Report and Order* (*Order on Reconsideration*), the FCC reconsiders several aspects of its five year fill-in policy set forth in the *Second Report and Order* in Docket 85–388. This action is necessary because several Petitions for Reconsideration of the *Second Report and Order* were filed. The effect of the FCC's action in the *Order on Reconsideration* is to retain its fill-in policy for Metropolitan Statistical Areas (MSAs) that prohibits the filing of competing applications against licensees' fill-in applications for a period of five years. On reconsideration, the FCC is providing that the five year fill-in period begins to run from the date of the initial construction authorization for each frequency block granted in an MSA. The FCC also clarifies that its policy for eliminating the wireline set aside applies to applications for unserved areas after the expiration of the five year period. In addition, the FCC declines to adopt a sixty day grace period for accepting wireline fill-in applications without competing applications after expiration of the five year period.

EFFECTIVE DATE: August 24, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services Division, Common Carrier, Bureau; tele: 202–632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration of Second Report and Order*, adopted May 31, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order on Reconsideration of Second Report and Order

1. On July 6, 1989, the Commission released in this proceeding an *Order on Reconsideration of Second Report and Order*, (*Order on Reconsideration*), Petitions for Reconsideration of the *Second Report and Order*, 52 FR 16847 (1987), had been filed. Prior to the *Second Report and Order*, the FCC had issued a *Further Notice of Proposed Rulemaking*, 51 FR 42597 (1986) (NPRM), in Docket No. 85–388. In the *NPRM*, the FCC had invited comment on separate procedural matters concerning its fill-in policy for Metropolitan Statistical Areas (MSAs) and whether non-licensees should be allowed to file or be granted applications to serve unlicensed areas in MSAs at some fixed period after the grant of the construction permit. In the *Second Report and Order*, the FCC allowed only licensees and permittees to file fill-in applications to serve such areas which are within a MSA but outside the existing Cellular Geographic Service Area (CGSA). The FCC determined that these applications could be filed for a period of five years, beginning from the date of the first construction permit granted in each MSA, regardless of whether that grant was to a non-wireline or wireline applicant. To codify this, the FCC added § 22.31(a)(1)(i).

2. Two petitions for reconsideration of the *Second Report and Order* contend that the FCC did not provide sufficient notice of its fill-in policy to applicants that wanted to file competing applications in response to licensees' fill-in applications in the top 90 MSAs. The petitions request that the FCC allow the filing of mutually exclusive applications in response to fill-in applications of licensees in the top 90 MSAs prior to the expiration of the five year period. They base their argument on *Maxcell Telecom Plus, Inc.* v. *FCC*, 815 F. 2d 1551 (D.C. Cir. 1987) (*Maxcell*). They assert that *Maxcell* directed the Commission to accept all "responsive"

fill-in applications in a top 90 MSA because the notice provided by the *NPRM* cannot correct the insufficiency of prior FCC notice found by the court.

3. In the *Order on Reconsideration*, the FCC rejected petitioners' argument and stated that *Maxcell* held only that the FCC could not dismiss an application as untimely filed for failure to comply with a date certain for filing cut-off procedure of which the FCC had not given adequate notice. The FCC said that the *NPRM* in this proceeding provided potential MSA applicants with explicit notice that if the proposed fill-in policy were adopted for some period of time, it would have an impact on their expectation of being eligible to serve any unlicensed areas in an MSA.

4. The FCC also weighed the harm that petitioners alleged they would suffer from a five year fill-in period against the benefits of its fill-in policy. The FCC concluded that this harm was outweighed by the benefits of its fill-in policy to the public.

5. At the request of another petitioner, the FCC also reconsidered the five year fill-in period running for both frequency blocks in an MSA from the date of the first grant regardless of whether that grant was to the wireline or non-wireline applicant. Upon reconsidering the technical, operational and financial considerations presented, the FCC found that requiring the second licensed carrier in an MSA to expand within five years from the date of the first carrier's construction permit or be subject to competing applications unfairly restricts the second carrier's ability to meet unpredictable changes in service needs. Accordingly, the FCC amended § 22.31(a)(1)(i) of the rules to provide all licensees a protected fill-in period of five years which runs from the date of the initial construction authorization for each frequency block granted in an MSA.

6. The FCC also clarified that the wireline set aside is eliminated after the five year period expires for the MSA wireline frequency block. It noted that the set aside had served the FCC's policy objectives for the initial licensing of the MSAs and that the reasons for it could not be promoted by extending it to MSA applications for unserved areas.

7. Also, the FCC declined to adopt a 60 day grace period for accepting wireline fill-in applications without competing applications after expiration of the five year period. In addition, the FCC declined to announce at this time the means it would use to choose applications for remaining unserved areas. The Commission indicated that it would soon request comments on what method should be used.

Ordering Clauses

8. Accordingly, *it is ordered*, That the Petitions for Reconsideration and Clarification filed in this proceeding are granted to the extent set forth herein, and are otherwise denied.

9. *It is further ordered*, That Part 22 of the Rules is amended as specified below. These amendments and other policies adopted in this order will become effective 30 days after publication of this document in the **Federal Register**.

List of Subjects in 47 CFR Part 22

Communications common carriers; Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rules Section

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.31(a)(1) is revised to read as follows:

§ 22.31 Mutually exclusive applications.

(a) * * *

(1) In the Domestic Public Cellular Radio Telecommunications Service, applications shall be considered mutually exclusive if their proposed Cellular Geographic Service Areas (CGSAs) overlap in such a way that a grant of one would preclude the grant of one or more of the other applications, except that applications for the same Rural Service Area (RSA) will be considered mutually exclusive regardless of whether their CGSAs overlap, provided however that:

(i) Notwithstanding any other provision of the rule section and rule provision of this part, applications by other than licensees or grantees for a Metropolitan Statistical Area (MSA) to serve unserved areas outside the presently authorized CGSA but within the MSA will not be accepted for five years from the date of the grant of the original construction authorization of each system in an MSA.

* * * * *

[FR Doc. 89-17303 Filed 7-24-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-610; RM-5898]

Television Broadcasting Services; Bakersfield, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 65 to Bakersfield, California, as that community's fifth commercial television service, in response to a petition filed on behalf of Gene Denari. Coordinates for Channel 65 at Bakersfield are 35-22-30 and 119-01-18.

However, this is affected by the Commission's current freeze on allotments, or applications therefor, in certain metropolitan areas, since Bakersfield is located within the zone encompassed by Los Angeles, California, one of the specified communities. Thus, the application process for Channel 65 will be delayed until the freeze is lifted.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the application filing process should be addressed to the Video Services Division, Televison Branch, Mass Media Bureau, (202) 632-6357.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-610, adopted June 26, 1989, and released July 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended by revising the entry for Bakersfield, California, to add Channel 65+.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17305 Filed 7-24-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-500; RM-6436]

Radio Broadcasting Services; South Webster, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Christian R. Caggiano, allots Channel 235A to South Webster, Ohio, as the community's first local FM service. Channel 235A can be allotted to South Webster in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) east to avoid a short-spacing to the pending application of Station WOFX(FM), Fairfield, Ohio (BPH-880304IA). The coordinates for this allotment are North Latitude 38-48-48 and West Longitude 82-42-00. Canadian concurrence has been obtained since South Webster is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective September 1, 1989. The window period for filing applications will open on September 5, 1989, and close on October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-500, adopted June 30, 1989, and released July 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding the following entry, South Webster, Ohio, Channel 235A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17304 Filed 7-24-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 141
Tuesday, July 25, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

Programs for Specific Positions and Examinations (Miscellaneous); Appointment, Pay and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations governing the appointment, pay and removal of administrative law judges. This proposed regulation would permit an administrative law judge to transfer to another agency before completing 1 year of service, provided the losing agency agrees to the transfer. If both the gaining and losing agency agree to a transfer before the usually required 1 year of service following appointment is completed, such transfers should be permitted under the regulations, so that the gaining agency does not have to request a variation from established regulations to effect the transfer.

DATE: Comments must be received on or before September 25, 1989.

ADDRESS: Send or deliver written comments on the Office of Administrative Law Judges, Career Entry and Employee Development Group, Office of Personnel Management, Room 2433, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Craig B. Pettibone, Assistant Director for Administrative Law Judges, (202) 632–5677.

SUPPLEMENTARY INFORMATION: To protect the appointing agency against the premature loss of a newly appointed administrative law judge, 5 CFR 930.206(c) bars the transfer of an administrative law judge from one agency to another sooner than 1 year after the judge's last appointment. An agency recently requested a variation from 5 CFR 930.206(c) to permit the transfer to it of an administrative law judge who had been appointed by another agency less than 1 year ago. The requesting agency considered the person involved to be the best qualified administrative law judge available and better qualified than candidates within reach for selection on the register. Because the losing agency agreed to the transfer before the year was completed, there was no reason not to grant the request. In order to make future variation requests unnecessary should similar cases arise again, an amendment to the regulation is proposed to allow such transfers during the year following appointment, provided the gaining and losing agencies agree to the transfer.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities because it only affects personnel provisions under which Federal administrative law judges are appointed, paid, and removed.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Government employees.

Office of Personnel Management,
Constance B. Newman,
Director.

Accordingly, OPM proposes to amend 5 CFR Part 930 as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Appointment, Pay and Removal of Administrative Law Judges

1. The authority citation for Subpart B, Part 930, continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5335(a)(B), 5372, 7521.

2. Section 930.206(c) is revised to read as follows:

§ 930.206 Transfer.

* * * * *

(c) An agency may not transfer a person from one administrative law judge position to another administrative law judge position under paragraph (a) or (b) of this section sooner than 1 year after the person's last appointment unless the gaining and losing agency agree to the transfer.

* * * * *

[FR Doc. 89–17352 Filed 7–24–89; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[Docket No. AO–179–A52; DA–88–113]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts certain changes in the classification provisions of the Eastern Ohio-Western Pennsylvania milk order based on industry proposals considered at a public hearing held November 1, 1988. The classification of milk used to make buttermilk biscuit and pancake mixes would be changed from Class I to Class III, eliminating raw product cost differences for milk so used between the Eastern Ohio-Western Pennsylvania order and surrounding Federal order markets. The decision also eliminates the requirement that handlers obtain prior approval from the market administrator if milk dumped at the plant is to be classified as Class III.

Proposals to change the classification of lowfat eggnog from Class I to Class II and of buttermilk used by a retail business to make biscuits from Class I to Class III are denied.

The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the Eastern Ohio-Western Pennsylvania marketing area. A referendum will be conducted to determine whether producers who supplied milk during April 1989 favor issuance of the amended order.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued October 13, 1988; published October 18, 1988 (53 FR 40733).

Recommended Decision: Issued April 13, 1989; published April 18, 1989 (54 FR 15413).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Middleburg Heights, Ohio, on November 1, 1988. Notice of such hearing was issued on October 13, 1988 and published October 18, 1988 (53 FR 40733).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on April 13, 1989, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modification:

Under the heading "1. Classification of buttermilk products for use in biscuit and pancake mixes.", six new paragraphs are added after paragraph 10.

The material issues on the record of the hearing relate to:

1. Classification of buttermilk products for use in biscuit and pancake mixes.

2. Classification of milk dumped by handlers.

3. Classification of lowfat eggnog.

4. Temporary increase of pool supply plant delivery requirement to pool distributing plants.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Classification of buttermilk biscuit and pancake mixes.* Under the Eastern Ohio-Western Pennsylvania milk order, a Class III classification should apply to skim milk and butterfat used to produce buttermilk biscuit and pancake mixes. At the present time, these products are not designated in the classification provisions of the order, and milk used in the products is therefore considered Class I. However, a product identified as buttermilk that is packaged and sold to restaurants for use in making biscuits should retain its Class I classification.

Sani-Dairy and Oberlin Farms Dairy, Inc., proposed that buttermilk biscuit mix be given a Class III classification. The witness testifying in support of the proposal also recommended that the classification of milk used in buttermilk pancake mix also be changed to Class III, as that product is similar to buttermilk biscuit mix. The witness for the two handlers testified that buttermilk biscuit mix is not a retail product, but is sold to fast food restaurants, bakeries, and other restaurants for use in baking biscuits. He stated that the product is labeled "Buttermilk biscuit mix (for further manufacturing)", and contains added stabilizer, salt and biscuit flour. The witness stated that the added salt changes the taste of buttermilk and the flour changes the color, making the buttermilk biscuit mix unpalatable for drinking.

The witness testified that Sani-Dairy is located in Pennsylvania outside the Order 36 marketing area with more than 15 percent of its receipts sold as route disposition inside the marketing area as is required for pool status. Because of the dairy's location in western Pennsylvania, it competes with other Pennsylvania handlers for sales of the buttermilk biscuit mix item to fast food restaurants. Many of these Pennsylvania handlers are regulated by the Pennsylvania Milk Marketing Board (PMMB), which classifies milk used in buttermilk biscuit mix as Class II. Because PMMB milk regulation has only two classes, the Class II price under the PMMB is equivalent to the Order 36 Class III price. Sani-Dairy, then, finds itself at a competitive disadvantage because of the order's Class I classification of milk used in buttermilk biscuit mix.

Changing the classification of milk used to make buttermilk biscuit mix to Class III was opposed by Milk Marketing, Inc. (MMI), a cooperative association representing a large number of producers pooled under the order. An MMI witness testified that while the product is not designed to be consumed as a beverage in fluid form as Class I products are, it is not storable, market-clearing or national in distribution as Class III products should be. The MMI witness recommended that buttermilk biscuit mix be classified in Class II, and supported the recommendation by citing the "Uniform Classification Decision" which established uniform classification throughout the majority of Federal milk order markets. The witness also observed, however, that the product is currently classified in Class III in the adjoining Ohio Valley order.

Since buttermilk biscuit mix, as formulated and packaged by proponents, is not intended to be distributed for use as a beverage and because the record shows that its basic composition is that of a nonfluid milk product, it is appropriate to classify the product in a lower-priced class. Likewise, buttermilk pancake mix should be treated similarly, as it appears to be a closely-related product. Changing the classification of buttermilk biscuit mix will place Order 36 handlers on a comparable basis with handlers regulated by the nearby Federal Orders 33 and 40, and with handlers regulated by PMMB. Including buttermilk pancake mix as a Class III use will place Order 36 handlers on a comparable basis with Order 40 and PMMB-regulated handlers. In Order 33, pancake mix is classified as Class II. Due to the small difference between the Class II and Class III prices and the minor volume of milk used in pancake mixes, it is not expected that the product's differing classification in Orders 33 and 36 will cause handlers to gain any material competitive advantage.

Taylor Milk Company proposed that the classification of buttermilk biscuit mixes, buttermilk and buttermilk blends sold for use in on-premises baking at a retail business should be changd from Class I to Class II. A representative of Taylor Milk Company testified that during the past five years, the buttermilk market has broadened from sales for

fluid consumption only to sales to a number of fast food restaurants which use the buttermilk solely for making biscuits. The witness stated that the buttermilk product sold by Taylor Milk Company to a fast food restaurant chain contains no modified food starch, but instead contains 1 percent nonfat dry milk to add body and texture to the product. According to the witness, Taylor Milk Company's principal competitor for this account is an Order 1 (New England)-regulated handler that adds modified food starch to its buttermilk. The witness expressed concern that the fast food restaurant might buy all of its buttermilk for biscuits from the Order 1 handler, and shift its purchases of other milk products to that handler as well. He stated that the effect of such a result would be to shift sales of producer milk out of the marketing area, causing a surplus of milk that would be classified as Class III, and thereby reducing prices paid to producers.

The Taylor Milk Company representative described three categories of buttermilk that should be classified as Class II. He defined buttermilk biscuit mixes as including flour and other ingredients that would be sold in a form that could be poured in a pan and baked. Class II Buttermilk would be buttermilk that is sold to a restaurant for use in making biscuits, and buttermilk blend was described as containing added nonmilk solids.

Taylor Milk Company's proposal to include buttermilk sold to a retail business for use in baking was opposed by witnesses representing Dean Foods and MMI. The Dean Foods representative stated that the proposed change would result in differences in classification between Order 36 and Orders 33 and 40, and thereby cause competitive disruptions between the marketing areas. The witness also maintained that buttermilk not adulterated with nonmilk ingredients is not distinguishable from a fluid milk beverage. The MMI witness testified that buttermilk is a consumable fluid beverage and should be classified as Class I.

There is not indication in the hearing record that the buttermilk biscuit mix described by the Taylor Milk Company witness is produced by any milk handler in the Order 36 marketing area, or indeed by any milk handler anywhere. The product described by the witness as "buttermilk blend" is the buttermilk biscuit mix discussed earlier in this decision that is to be included in Class III. Buttermilk sold to a restaurant for use in biscuits is not changed solely by virtue of its intended end use, and should retain Class I classification. The addition of nonfat milk solids, rather than nonmilk solids, serves only to make the product a fortified buttermilk. The order should not differentiate between customer uses of fluid milk products. Buttermilk and other fluid milk products are often used in home baking as well as restaurant baking. It would be difficult administratively to attempt to establish price difference between similar products used differently by customers.

As noted earlier, prices to producers are not expected to be affected materially by changing the classification of buttermilk biscuit and pancake mixes to Class III rather than to Class II. The price difference between the two classes averages only about 10 cents per hundredweight, or less than 1 percent of the order's uniform price to producers, and the volume of milk involved is not substantial.

Exceptions filed on behalf of MMI took issue with the change in classification of buttermilk biscuit mix from Class I to Class III. The cooperative agreed that the product should not be considered a fluid milk product, but that it should be classified as Class II, rather than as Class III. In the cooperative's exceptions to the recommended decision, it was stated that the record contained no evidence of competitive disadvantage or disruptive marketing conditions, that even a potential competitive advantage on the part of PMMB handlers is non-existent, that the decision would result in a potential inter-order competitive disadvantage for Order 36 handlers with Order 4 handlers, and that the small price difference between Class II and III doesn't make Class III classification of buttermilk biscuit mix necessary under Order 36 in order for Order 36 handlers to be competitive with handlers regulated under Orders 33 and 40.

Contrary to MMI's assertion that the record contains no reference to a specific handler offering buttermilk biscuit mix at a lower price, or of any specific competitive advantage to another handler, the Taylor Milk Company representative testified at length about Taylor's competition with the H.P. Hood Company for sales to McDonald's fast food restaurants. The witness made it clear that the Hold Company does have distribution of some products into the Order 36 marketing area, and is subject to a significantly lower cost than is Taylor Milk Company for raw milk used in the production of buttermilk biscuit mix. The Taylor witness also explained that loss of the McDonald's buttermilk biscuit mix business would likely include the loss of contracts for the sale of ice milk and milk shake mix to McDonald's.

MMI further argued that the recommended decision is incorrect in its description of the Pennsylvania Milk Marketing Board (PMMB) regulation to which western Pennsylvania handlers are subject. The cooperative states the PMMB has 3 classes, rather than 2 as stated in the recommended decision, and that the PMMB Class II price is equivalent to the Federal order Class II price, rather than the Federal order Class III price. The description of PMMB classification and pricing contained in the recommended decision is supported by the hearing record. If MMI representatives were aware of information contrary to that given in testimony at the hearing, they had ample opportunity to testify and clarify the record. The record of the public hearing is the only basis upon which a decision on the issues involved may be made.

The cooperative argued that handlers regulated under Order 4, the closest Federal order marketing area to the east of the Order 36 marketing area, would be competitively disadvantaged because buttermilk biscuit mix is considered a Class I product under Order 4. Although buttermilk biscuit mix may be classified as Class I under Order 4, it is classified as Class III in Orders 33 and 40, both of which are located closer to Order 36 than is Order 4. Therefore, handlers regulated under these orders might be expected to offer greater competition to Order 36-regulated handlers than handlers regulated under Order 4. MMI also pointed out that none of the classification changes proposed for the three northeast Federal orders (Orders 1, 2 and 4) and considered at a public hearing held during June, July and November of 1988 would classify milk used to make buttermilk biscuit mix as Class III. No decision about classification in that multiple-market proceeding has been released. In any case, a decision in this current proceeding cannot be based upon potential changes in other Federal order markets.

The MMI exceptions observed that the reasons given in the recommended decision for classifying buttermilk pancake mix differently in Order 36 that in adjoining Order 33—the small difference between the Class II and Class III prices and the minor volume of milk used in pancake mixes—could also be used to classify buttermilk biscuit mixes differently in Order 36 than in Orders 33 and 40. However, the hearing record indicates that pancake mixes

account for only a fraction of the sales that biscuit mixes do, and that handlers find the market for pancake mixes much less competitive than that for biscuit mixes. In fact, both of the handler representatives who testified in support of reducing the classification of milk used in buttermilk biscuit mix because of competitive concerns stated that their organizations do not market pancake mixes.

For the reasons discussed above MMI's exceptions to the recommended decision do not provide a sufficient basis for a change from that decision.

2. *Classification of milk dumped by handlers.* Milk dumped or disposed of as livestock feed should be allowed to be classified as Class III use without prior approval by the market administrator when adequate records are available to support such use. Handlers must notify the market administrator on the next business day after such disposition.

Three proprietary handlers proposed that milk dumped, spilled or disposed of as livestock feed be classified as Class III without prior notification of, and approval by, the market administrator. The proponents' witness explained that under the current provisions of the order, a vat of milk intended for use in cottage cheese or cultured buttermilk that does not "set up" or culture may be dumped as Class III milk only after the market administrator has been notified of such a necessity, and approved it. According to the witness, the manufacturing process is delayed and its costs are increased when handlers must retain the milk in vats until approval is obtained. Also, he stated that such occurrences do not always occur during the market administrator's normal business hours when market administrator personnel are readily available to grant such approval. The witness testified that manufacturing records maintained by handlers are an adequate basis for substantiating such use, which could be verified at a later time during normal auditing procedures. There was no opposition to adoption of the proposal from industry representatives attending the hearing.

Under cross examination about inclusion of the word "spilled" in proponents' proposal, proponents' witness stated that the language of the proposed provision was identical to that contained in Order 33. However, if the need for conformity of order provisions between milk orders were a constraint, Order 33 would have to be amended to require prior approval of Class III use of dumped milk since all other orders currently require such prior notification and approval. Other orders do not require prior approval for the disposition of milk as animal feed and none allow spilled milk to be reported as a Class III use. Since Order 36 does not now require the market administrator's prior approval of milk disposed of as livestock feed as a Class III use, that current provision of the order requires no change. Also, milk spilled through carelessness or sloppiness should continue to be included in a handler's shrinkage, as it is under the present order provisions. If an excessive percentage of receipts is spilled or lost in the plant's operations, any amount exceeding the order's Class III shrinkage allowance is classified as Class I use. This provision is designed to assure that handlers have an incentive to make careful use of the milk they receive, so that producers do not have to bear the cost of handler carelessness through reduced uniform prices. Therefore, the word "spilled" should be omitted from the amended order language.

According to the hearing record, allowing milk dumped by a handler without prior notification of the market administrator to be classified as a Class III use would enhance the efficiency and reduce the cost of handlers' manufacturing operations. Furthermore, adequate records of such use would assure that a handler's latitude in dumping milk found to be unfit for its intended purposes would not be abused. In order to have dumped milk classified as a Class III use, handlers should be required to notify the market administrator of such use at their earliest opportunity during normal business hours.

3. *Classification of lowfat eggnog.* A proposal by Superior Dairy, a proprietary distributing plant operator, to change the classification of lowfat eggnog from Class I to Class II should not be adopted. Although the proposal as included in the hearing notice would have changed the product's classification to Class III, the Superior Dairy witness modified the proposed classification to Class II at the hearing. According to the witness, Superior Dairy currently produces a product called "holiday nog" from non-dairy ingredients, but would like to sell a lowfat eggnog made from fresh milk if the raw product cost of the beverage could be reduced. The witness estimated the difference in price of such a product between Class I and Class II classification to be 3–4 cents per quart. He stated that as a result of the proposed re-classification, producers would benefit from the expanded outlet for dairy ingredients; dairy processors would be able to manufacture a better-tasting and more wholesome product than those now made of imitation ingredients; and consumers would benefit from the availability of a lower-fat product at a competitive price. The witness testified that lowfat eggnog should be any eggnog product containing less than 3.5 percent butterfat. He characterized lowfat eggnog as differing from chocolate drink by the type of flavoring used and the seasonal nature of the product.

Adoption of the proposal was opposed by MMI and a representative of Dean Foods. The MMI witness testified that fluid milk products are those consumed in fluid form as beverages, and stated that lowfat eggnog falls within that definition. He pointed out that the product has about the same shelf life as other fluid milk products, and that the season of greatest demand for the product is the months of October through December when the milk supply is at its lowest level. The witness further testified that reclassifying lowfat eggnog to a lower class would create competitive disadvantages for handlers in neighboring orders who produce the product.

The Dean Foods representative also opposed changing the classification of lowfat eggnog on the basis of inter-market competition, testifying that Dean Foods bottles and distributes such a product as a Class I product in several surrounding milk order marketing areas. The witness also noted that Dean Foods' and its competitors' lowfat eggnog product is not made from imitation ingredients, but from fresh milk.

Lowfat eggnog is clearly a fluid milk product intended for consumption as a beverage. Proponent advanced no persuasive basis for reducing returns to producers for milk disposed of in the form of a flavored fluid milk product. Furthermore, classification of all flavored fluid milk products should be the same regardless of the type of flavoring used. Dean Foods' ability to market lowfat eggnog classified in Class I in neighboring marketing areas indicates that Superior Dairy should also be able to market such a product successfully. Producers then would benefit from the expanded outlet for fluid milk classified, as it should be, as Class I rather than in a lower class that would reduce producer returns. Further, dairy processors regulated under other orders apparently are able to process a lowfat eggnog which consumers will buy without a reduction in the classification of the product. Consumers would have available a lower-fat eggnog at a price competitive with similar fluid milk products. Consequently, the classification of lowfat eggnog should not be reduced to Class II.

4. *Temporary increase of pool supply plant delivery requirement to pool distributing plants.* As noted in the hearing notice, a proposal by MMI and Superior Dairy would have increased temporarily the percentage of milk required to be shipped by pool supply plants to pool distributing plants. At the hearing, MMI withdrew its proposal on the basis that the hearing had not been held in a timely manner, and that the temporary revision would no longer be appropriate. A witness for Superior Dairy did not support the proposal. There was no further testimony regarding the proposal. Accordingly, no further consideration is given to the proposal in this proceeding.

Two additional proposals proposed at the hearing by the Superior Dairy representative could not be considered because they were not included in the hearing notice.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Eastern Ohio-Western Pennsylvania order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 25th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–900.311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be April 1989.

The agent of the Secretary to conduct such referendum is hereby designated to be C. Mack Endsley.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on: July 20, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Eastern Ohio-Western Pennsylvania Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only

to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator on April 13, 1989, and published in the **Federal Register** on April 18, 1989 (54 FR 15413), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for 7 CFR Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1036.40 is amended by revising paragraphs (c) (1) and (3) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class II products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, buttermilk biscuit and pancake mixes, any product containing six percent or more nonmilk fat (or oil) and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

* * * * *

(3) Skim milk and butterfat in fluid milk products, fluid cream products and products listed in paragraph (b)(3) of this section that are dumped by a handler who maintains adequate records of such use and notifies the market administrator of such use on the next business day following such use.

Marketing Agreement Regulating the Handling of Milk in the Eastern Ohio-Western Pennsylvania Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1036.1 to 1036.122, all inclusive, of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area (7 CFR Part 1036) which is annexed hereto; and

II. The following provisions:

Section 1036.123 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of April 1989 , hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Section 1036.124 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Seal)

Attest _____

Date _____

_____

(Signature)

By _____

(Name) (Title)

_____

(Address)

[FR Doc. 89–17382 Filed 7–24–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1131

[DA–89–018]

Milk in the Central Arizona Marketing Area; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed suspension of rule.

SUMMARY: This action terminates a proceeding that was initiated to consider a proposal to suspend the provisions of the Central Arizona milk order that define an "Associated producer" and "Associated producer milk", and describe the relationship of associated producers and associated producer milk to the marketwide pool. The provisions that were proposed to be suspended allow payments from pool proceeds to be made to producers who are primarily associated with the Central Arizona marketing area if a pool plant operator refuses to accept a portion of their milk and such milk is marketed by the dairy farmers directly to nonpool plants for use in manufacturing.

The suspension was requested on behalf of United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the producers who supply milk to the Central Arizona market. UDA contended that the action was necessary because the provisions are no longer serving their intended purpose and cannot be administered effectively.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior Document in this proceeding: Notice of Proposed Suspension: Issued April 26, 1989; published May 2, 1989 (54 FR 18665).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This proceeding was initiated by a notice of proposed suspension published in the **Federal Register** on May 2, 1989 (54 FR 18665) concerning a proposed suspension of a certain provision of the Central Arizona Federal milk order. Interested persons were invited to comment on the proposal in writing by June 1, 1989.

Statement of Consideration

The proposed suspension would have suspended indefinitely the provisions of the Central Arizona milk order that

define an "Associated producer" and "Associated producer milk", and describe the relationship of associated producers and associated producer milk to the marketwide pool. The provisions that were proposed to be suspended allow producers who are primarily associated with the Central Arizona marketing area to share in proceeds from the marketwide pool if a pool plant operator refuses to accept a portion of their milk and such milk is marketed directly by the dairy farmers to nonpool plants for manufacturing use. The effect of the proposal would have been to curtail such producers' participation in the marketwide pool on the amount of their milk for which they must find their own surplus outlet.

The suspension was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA argued that the provisions were designed specifically to accommodate a single large producer located within the marketing area. However, the cooperative stated that the producer in question has never used the provisions to enhance the returns for his surplus milk, and is not expected to have any need to use them in the future. According to UDA, the producer does not even meet the order's requirements for using the provisions. The cooperative stated that it has agreed to receive a certain amount of the producer's surplus milk and pay him the order's blend price. UDA concluded that the "associated producer" provisions of the order have therefore become unnecessary.

UDA also contended that although the provisions it requested to be suspended are being used by a California producer, they cannot be administered in the manner contemplated by the order. The cooperative stated that the market administrator must rely on assumptions about a producer's milk production and deliveries to pool plants in order to determine whether a producer meets the basic requirement that at least 50 percent of the milk production from the producer's farm be delivered to pool plants as producer milk of a handler.

According to UDA, the provisions proposed to be suspended resulted in payments of over $100,000 in 1988 from the marketwide pool to the California producer. The cooperative characterized the payments as "unwarranted exploitation of the Order 131 pool and an unjustified charge against the Order 131 blend price to the financial detriment of its producers."

In response to the notice of proposed suspension, three comments were received from interested parties. Comments filed on behalf of UDA reaffirmed its support of the proposed suspension. Comments filed by Jerome LaSalvia Dairy described that entity as the "single large producer located within the marketing area" whose milk production the provisions proposed to be suspended were originally intended to accommodate. Mr. LaSalvia took exception with UDA's statement that he is not expected to use the provisions in the future on the basis that UDA has no authority to speak for him. The producer attributed his failure to avail himself of the provisions to the inadequacy of the provisions in accommodating his operations, and proposed that the "associated producer" provisions be changed to limit their applicability to producer milk originating within the geographical boundaries of Order 131. Mr. LaSalvia agreed with UDA's characterization of payments from the marketwide pool to the California producer as an "unjustified charge against the Order 131 blend price", but failed to clarify whether he supported or opposed the proposed suspension.

Comments opposing the proposed suspension were filed on behalf of Pacific Coast Dairy #2, the California producer who has qualified its surplus production as "associated producer milk" and drawn money out of the marketwide pool at a rate determined by the difference between the order's blend price to producers and the Class III price. The producer argued that suspension of the "associated producer" provisions would have a devastating monetary impact on Pacific Coast Dairy #2, which has relied on those provisions in maintaining its dairy herd size and in building a dairy of its present capacity. If the provisions were suspended, the producer states that it would have to immediately reduce its milking herd, lay off employees, and operate at much less than full capacity. Such actions, according to the producer, would create a severe financial burden because fixed overhead costs would not be reduced.

Pacific Coast Dairy #2 points out that it has established an association as a producer in the Central Arizona market, and is required under the order's provisions to meet more stringent standards of deliveries to pool plants than are required of producers whose entire production is pooled. During the months of December through April, the producer states, the milk of pooled producers may be diverted to nonpool plants without limit, while "associated producers" must still deliver at least 50 percent of their milk to pool plants.

Pacific Coast Dairy #2 disputes UDA's assertion that the market administrator must rely on "assumptions" about a produce's milk production and deliveries to pool plants in order to determine whether the producer meets the basic requirements. The producer argues that it has used independent third parties to fully disclose and verify to the market administrator the producer's milk production and deliveries to nonpool plants. Therefore, it states, it is in complete compliance with the "associated producer" provisions, full disclosure to the Market Administrator has always been available, and that disclosure is the basis upon which the market administrator makes his determination of the associated producer's status.

It is apparent that Pacific Coast Dairy #2 has relied on the Central Arizona market as its primary outlet for milk production for a long period of time, and has established its willingness and ability to supply milk to meet the market's fluid needs.

Contrary to the UDA's assertions, the market administrator is able to monitor the "associated producer's" deliveries to nonpool plants on the basis of more than mere assumptions. Pursuant to § 1131.22(a) of the Central Arizona order, milk diverted by the "associated producer" to nonpool plants "shall not qualify as associated producer milk unless the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator. Milk so diverted shall qualify as associated producer milk to the extent such milk is used for manufacturing purposes at the nonpool plant."

In view of the above considerations it is concluded that the proposal should not be adopted. It is clear that the provisions sought to be suspended are still necessary and tend to effectuate the purposes of the Apricultural Marketing Agreement Act of 1937, as amended. Therefore, the requested suspension is hereby denied and the proceeding is terminated.

List of Subjects in 7 CFR Part 1131

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1131 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC on July 20, 1989.
Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 89-17355 Filed 7-24-89; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-53]

The Ohio Citizens for Responsible Energy; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated May 26, 1989, which was filed with the Commission by the Ohio Citizens for Responsible Energy (OCRE). The petition was docketed by the Commission on May 26, 1989, and has been assigned Docket No. PRM-50-53. The petitioner requests that the NRC reopen the ATWS rulemaking proceeding. This request was one portion of request by OCRE that NRC take a number of actions to relieve alleged undue risks posed by the thermal-hydraulic instability of boiling water reactors (BWRs).

DATE: Submit comments by September 25, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION: On July 22, 1988, the Ohio Citizens for Responsible Energy (OCRE) filed a request for action under 10 CFR 2.206 with the Nuclear Regulatory Commission (NRC). This petition was referred to the Director, Office of Nuclear Reactor Regulation (NRR) for consideration. Under the provisions of 10 CFR 2.206, a person may request that the NRC institute a proceeding to modify, suspend, or revoke a license or take any other action that may be proper under 10 CFR 2.202. Section 2.202 authorizes the Executive Director for Operations and the Office Directors with program authority to take this type of action by serving an order to show cause on the licensee. This type of proceeding, generally referred to as a petition for a director's decision under 10 CFR 2.206, involves licensing actions and pertains to a specific facility or class of facilities.

OCRE requested that the Director, NRR, take immediate action to relieve alleged undue risks to the public health and safety posed by the thermal-hydraulic instability of boiling water reactors (BWRs) revealed by the power oscillation event at LaSalle Unit 2 on March 9, 1988 (LaSalle Event). The petitioner specifically requested the NRC to order all BWR licensees to: (1) Place their reactors in cold shutdown, (2) develop and implement specified operating procedures relating to the thermal-hydraulic instability issues, (3) demonstrate that certain specified training has been provided relating to these procedures, (4) demonstrate the capability of instrumentation related to power oscillations, (5) develop simulators capable of modeling power oscillations similar to those occurring at LaSalle as well as out-of-phase power oscillations, (6) report to the NRC all past and future incidents in which recirculation pumps have tripped off, or in which power oscillations were involved, and (7) submit to the NRC justification for continued operation of BWRs.

In addition, the petitioner requested that the NRC reopen Generic Issues B-19 and B-59, and also the Anticipated Transients Without Scram (ATWS) rulemaking proceeding. The petitioner suggested that resolution of the ATWS problem depends on measures other than tripping the recirculation pumps to rapidly reduce reactivity. In this regard, the petitioner specifically suggests the use of an automatic, high-capacity standby liquid control system. Finally, the petitioner suggests that the NRC reconsider the use of the End-of-Cycle Recirculation Pump Trip on BWRs.

The Director, NRR, acknowledged receipt of the request for action in a letter to the petitioner dated August 26, 1988. The Director informed the petitioner that: (1) The request for immediate relief was denied because the allegations that formed the basis for the petition did not reveal any new operational safety issues that posed an immediate safety concern for continued BWR operation, (2) the petition would be treated under 10 CFR 2.206 of the Commission's regulations, and (3) appropriate action would be taken within a reasonable amount of time.

On April 27, 1989, the Director, NRR, responded to the OCRE request for action in a Director's Decision under 10 CFR 2.206. The NRC denied the petitioner's requests for action pursuant to 10 CFR 2.206 because the issuance of proceedings under 10 CFR 2.202 is appropriate only where substantial health and safety issues have been raised. The NRC determined that the petitioner's request did not raise any substantial health and safety issue.

In the Director's Decision (DD-89-03) the NRC denied all of the petitioner's requests, except for the request to reopen the ATWS rulemaking proceeding, which would be more properly treated as a petition for rulemaking under 10 CFR 2.802. A copy of the Director's Decision (DD-89-03) was filed with the Secretary of the Commission for the Commission's review as directed by 10 CFR 2.206 and notice of this action was published in the **Federal Register** on May 10, 1989 (54 FR 20218).

Under 10 CFR 2.802, an interested person may petition the Commission to issue, amend, or rescind any regulation. Because OCRE's request to reopen the ATWS proceeding could ultimately result in an amendment to the regulations in 10 CFR Part 50, the NRC is treating this portion of OCRE's request separately as a petition for rulemaking under 10 CFR 2.802. The ATWS portion of OCRE's request was docketed as a petition for rulemaking under 10 CFR 2.802 on May 26, 1989 (Docket No. PRM-50-53).

As background information, the NRC published a final rule on June 26, 1984 (49 FR 26036), that was intended to reduce the risks of an ATWS event for a light-water-cooled nuclear power plant. An ATWS event takes place if an abnormal operating condition (anticipated transient) occurs at a nuclear power plant which could cause the reactor protection system to initiate

a rapid shutdown (scram) of the reactor but the reactor shutdown system fails to function. The final rule, codified in 10 CFR 50.62, required the installation of certain equipment in nuclear power plants and encouraged the development of a reliability assurance program for the reactor trip system.

The NRC is currently performing confirmatory analyses of ATWS events. If evidence from these evaluations, or comments received as a result of this notice, show contradictions of assumptions and results of previous ATWS analyses, it may be appropriate for the Commission to reconsider the current ATWS rule.

Dated at Rockville, Maryland, this 18th day of July 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-17289 Filed 7-24-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-38-AD]

Airworthiness Directives; Certain Small Airplanes, Including Selected Beech, Cessna, Mooney and Piper Airplanes

AGENCY: Federal Aviatioin Administration (FAA), DOT.

ACTION: Withdrawal of a notice of proposed rulemaking (NPRM).

SUMMARY: This action withdraws a Notice of Proposed Rulemaking to adopt a new Airworthiness Directive, applicable to certain small airplanes, which would require the installation of a placard to specify that the airplane is equipped and approved for flight into known icing conditions, or that it is prohibited from such flight. On the basis of comments received in response to the Notice of Proposed Rulemaking (NPRM), issued on January 9, 1989, proposing the installation of icing operation placards in certain selected small airplanes, it has been determined that the NPRM should be withdrawn. Alternative courses of action, which will advise pilots of airplanes unapproved for icing flight not to fly into known icing conditions, have been undertaken and/or are being considered. Therefore, flight into such conditions is not likely to occur when these small airplanes are operated in a normal manner.

FOR FURTHER INFORMATION CONTACT: Neil B. Christenson (816) 426-6934.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1989, a Notice of Proposed Rulemaking (NPRM), was published in the **Federal Register** (54 FR 623) proposing the installation of icing operation placards in certain selected small airplanes with an adverse icing operation service history. This NPRM was in response to NTSB Safety Recommendation No. A-86-97. The comment period was opened on January 9, 1989, and was closed on March 10, 1989. This action withdraws the subject NPRM.

The FAA has received 257 comments to this proposed rule. All comments were negative and were generally composed of two (2) major complaints:

(1) The consensus of 254 of the commenters is as follows:

(a) The proposed placard would serve no purpose and is unnecessary because all pilots are warned of the dangers of icing flight early in their flight training and are continuously reminded of these dangers throughout their flying career.

(b) Pilots are reportedly well aware of the icing equipment which may be installed on their airplane, and a placard is not needed to so inform them.

(c) The cockpit area of most small airplanes is becoming cluttered with placards. Each additional placard added makes all the rest less noticeable.

(d) This type of information belongs in the Airplane Flight Manual or in the Pilot's Operations Handbook.

(2) 114 of the commenters replied that:

(a) The "Visible moisture and temperature of 5°C or less" definition of "known icing" is too conservative and not correct. A temperature where ice will always form is impossible to define.

(b) Even forecast icing cannot be considered "known icing." The most recognized definition of known icing is the PIREP or Pilot Report.

(c) Any airplane operating in a "+5°C and visible moisture" condition without approved icing equipment could be considered in violation of the FARS.

(d) This AD would, in effect, shut down operation for non-icing equipped airplanes in Alaska and the Northern U.S. for as much as 5 months of the year.

Two (2) commenters recommended that placards be required only on airplanes that already had some de-icing/anti-icing equipment installed, to clearly spell out icing approval status for those airplanes. They also recommended that the temperature/moisture criteria be deleted from the proposed placard. Many commenters expressed their opinion that education in the form of greater emphasis on weather knowledge during IFR training and possibly the creation of annual refresher ground schools would be a much more viable solution to the prevention of icing accidents than the proposed placard(s). Several commenters also stated that elimination of a number of flight service stations has made weather information more difficult to obtain.

The FAA agrees that the cockpit areas of some airplanes contain many placards. It also agrees that the Airplane Flight Manual or Pilot's Operating Manual may be an equally effective method of displaying this information. Most of the airplanes affected by this NPRM, however, were not required to have either an FAA approved pilot's operating handbook or flight manual when they were certificated. Therefore, a placard was proposed as a means of informing the pilot of this type of information.

The FAA further concurs with a number of comments received in that a large number of operators would have their flying time severely curtailed with a "visible moisture and a temperature of 5°C or less" flight operation limitation. This limitation was proposed to give an extra margin of safety from the "0°C and visible precipitation" icing definition in the Airman's Information Manual and was admittedly conservative. Some commenters expressed the opinion that this limitation may decrease the level of safety by forcing a pilot to fly at lower altitudes rather than fly into areas of precipitation where the temperature is less than +5°C. The FAA has determined that this opinion has merit.

From the comments received, the FAA recognizes that the public strongly feels that other actions, in lieu of a placard, may be appropriate to address this icing operation problem. A number of alternative actions have been iitiated or are being considered.

There is no FAR Part 91 icing flight operation rule that applies to nonturbine small airplanes. The FAA is currently considering incorporating icing operation limitations into Part 91, Subpart B, which would be applicable to all aircraft, similar to those already contained in Subpart D of Part 91 for large and turbine-powered multi-engine airplanes. In addition, the FAA is issuing a Special Engineering Issue, General Aviation Airworthiness Alert, reminding operators of the importance of reviewing airplane icing equipment approvals before flying into known icing and when encountering inadvertent icing. This Alert Bulletin will be sent to all registered owners of the airplanes contained in the NPRM AD Applicability List.

The FAA is also funding an Icing Forecasting Improvement Research & Development project, which is now being conducted by the National Airspace Advanced System Acquisition Service, and will begin a three (3) year field test in 1990.

In view of the public comments to this NPRM, and with the alternative action underway or being considered, the FAA has determined that this proposed Airworthiness Directive should not be issued.

For further information contact: Mr. Neil B. Christenson, Small Airplane Directorate, FAA, ACE-100, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6934.

NPRM Docket 88-CE-38-AD is hereby withdrawn. This action is pursuant to § 11.85 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11). Issued in Kansas City, Missouri, on July 12, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17247 Filed 7-24-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AC64

Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed rules would raise from $300 to $500 the earnings guidelines we use to determine whether persons with impairments other than blindness are able to do substantial gainful activity (SGA) for purposes of Social Security disability benefits provided under title II of the Social Security Act (the Act) and Supplemental Security Income (SSI) benefits based on disability provided under title XVI of the Act. They also would raise the earnings and monthly hours of work guidelines we use to determine whether a person has performed services for purposes of a trial work period under title II of the Act.

The amount of average earnings that ordinarily demonstrates SGA has not been increased since January 1, 1980, and the amount that shows the performance of services for a trial work period month has not been raised since January 1, 1979. We propose raising these levels now after reassessing the current guidelines during our effort to improve our incentives for disabled persons to return to work and in consideration of recommendations of the Disability Advisory Council. We believe that the increase in the amount of earnings and services which constitute SGA and trial work will provide a more meaningful opportunity for title II beneficiaries to attempt to return to work.

DATES: To be sure that your comments are considered, we must receive them no later than September 25, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (301) 965-1758.

SUPPLEMENTARY INFORMATION: These proposed regulations would increase the amount of earnings we use as guidelines to assist us in evaluating the work activity of claimants and beneficiaries with impairments other than blindness under title XVI of the Act. We use evaluation guides, including earnings guidelines, to determine whether an individual has shown the ability to do SGA. Under the earnings guidelines in §§ 404.1574 and 416.974 of our current regulations, if a person claiming title II or title XVI benefits or receiving title II benefits based on disability has earnings from work activities as an employee that average more than $300 a month, we ordinarily consider that the person has engaged in SGA. If such a person has earnings of less than $190 a month, we consider that he or she has not engaged in SGA unless there is evidence to the contrary. Under these proposed rules, the $300 a month limit would be raised to $500 per month and the $190 a month limit would be raised to $300 per month in calendar years after 1989.

We believe that this increase in the SGA level would be a significant improvement in existing work incentives and is a fiscally responsible change.

The Disability Advisory Council proposed that the SGA level be: (1) Adjusted to reflect the growth in average wages since it was last increased; and (2) indexed to average wage growth in future years.

While these regulations do not address the Disability Advisory Council's proposal to index the SGA level to average wage growth in future years, we are exploring ways to provide for periodic review of our SGA levels. If the Disability Advisory Council's combined proposal to raise the SGA level and adjust it for average wage increases were adopted, title II program costs would increase by $700 million over those currently budgeted for the next 5 years.

These proposed regulations would also increase the monthly earnings amounts we use to determine if work activity during a trial work period represents services under the trial work period provisions of title II of the Act.

We propose amending § 404.1592(b) to increase the minimum amount of earnings that we consider shows that a person is performing or has performed services during a trial work period from $75 a month to $200 a month, and the number of hours worked in self-employment that are considered to represent services from 15 hours to 40 hours a month. We propose increasing both the amount of earnings and hours in self-employment that constitute services for a trial work period month to encourage more title II beneficiaries to attempt to return to work without losing their benefits. We believe that both of these increases, i.e., from $75 to $200 and from 15 hours to 40 hours, are more representative of a normal work effort. These figures represent a judgment we have made based on our experience with these types of work efforts. In § 404.1592(b), we define "services" as any activity, even though it is not SGA, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We use this guide when reviewing work done by a person receiving Social Security disability benefits under title II of the Act during his or her trial work period.

The Disability Advisory Council recommended increasing the amount of earnings that counts toward a trial work period from $75 per month to the amount of the SGA level. While we believe that an increase in the trial work period exempt amount as shown in these

regulations is warranted, we have not adopted the Disability Advisory Council's proposal. The legislative history of the trial work period provision indicates that the Congress recognized and intended that the amount that constitutes trial work need not constitute SGA. In 1960, when the trial work period provision was enacted, the report of the House Ways and Means Committee said:

> * * * Your committee intends that any month in which a disabled person works for gain, or does work of a nature generally performed for gain, be counted as a month of trial work. Thus the services rendered in a month need not constitute substantial gainful activity in order for the month to be counted as part of the trial-work effort * * *.

It is estimated that raising the trial work period exempt amount as recommended by the Disability Advisory Council would increase title II program costs by $90 million over a 5-year period, as more people would be receiving benefit payments. In addition, the administrative costs would increase at the rate of an estimated $75 per beneficiary per year.

The provisions of title XVI concerning the trial work period and the cessation of disability because of the performance of SGA were eliminated as of July 1, 1987, pursuant to section 4 of the Employment Opportunities for Disabled Americans Act, Pub. L. No. 99-643. We are currently preparing a comprehensive notice of proposed rulemaking covering these and other changes to title XVI made by Pub. L. No. 99-643. The proposed rules, among other things, will include the deletion of § 416.992 governing the trial work period and § 416.992a governing the reentitlement period which, as of July 1, 1987, are no longer applicable in adjudicating SSI claims based on disability.

Regulatory Procedures

Executive Order 12291

Regulatory Impact Analysis

A. *Introduction.* The Secretary has determined that these proposed regulations require a regulatory impact analysis under Executive Order 12291 because they will result in a major increase in costs for the Federal government. Accordingly, the Department has prepared this Regulatory Impact Analysis to identify the cost impact of these proposed changes and the various alternatives that were explored, and to inform the public of the economic considerations supporting these proposed revisions in accordance with Executive Order 12291.

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule, i.e., a rule that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. *Nature of the Program.* Benefits to disabled and blind individuals are provided under title II and title XVI of the Act. Disability is defined under both programs as "* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *".

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is SGA and therefore whether that person may be considered disabled under the law. While this is only one of the tests used to determine disability, it is an important tool in disability evaluation. We evaluate the work activity of persons claiming or receiving disability benefits under title II of the Act and that of persons claiming benefits because of a disability under title XVI of the Act. These proposed regulations would increase the amounts of those earnings guidelines.

C. *Alternatives—SGA.* The Disability Advisory Council proposed that the SGA level be: (1) Adjusted to reflect the growth in average wages since it was last increased; and (2) indexed to average wage growth in future years. It was estimated that increasing the SGA level in this manner would result in a level of $490 per month beginning in 1988. The $490 per month figure was arrived at by raising the current level of $300 per month to the amount it would have been in 1988 if it had kept up with wage growth since 1980, when the SGA level was last increased.

Although these proposed regulations would not address the Disability Advisory Council's proposal to index the SGA level to average wage growth in future years, we are exploring ways to provide for periodic review of our SGA levels. As noted above, if the Disability Advisory Council's proposal to adjust the SGA level by average wage increases were adopted, title II program costs would increase by $700 million over those currently budgeted for the next 5 years. We believe that these increased costs would be prohibitive.

Other alternatives we considered were raising the SGA level we use for nonblind persons to the title II SGA level we use for the blind (currently $740) or raising the SGA level to the Federal minimum wage level for a 40-hour week, which is about $580 a month at the current Federal minimum hourly wage of $3.35. We rejected these options for the following reasons. First, a significantly higher SGA amount could discourage beneficiaries from becoming independent workers and, as a result, being taken off the disability rolls. This is particularly true for those who have large subsidies and impairment-related work expenses that will continue to be excluded from the SGA computation and those who are in lower paying jobs could increase their level of work and still not exceed the SGA limit. Second, a significantly higher SGA amount could prompt some persons who are now working to leave their current work, apply for and become entitled to disability benefits, and then seek part-time employment in order to keep their earnings under the SGA level.

Trial Work Period. The Disability Advisory Council recommended increasing the amount of monthly earnings that count toward a trial work period from $75 to the Disability Advisory Council's recommended SGA level. While we believe that an increase in the trial work period exempt amount as indicated in these proposed regulations is warranted, we have not adopted the Disability Advisory Council's proposal. The legislative history of the trial work period provision indicates that the Congress recognized and intended that the amount that constitutes trial work need not constitute SGA. In 1960, when the trial work period provision was enacted, the report of the House Ways and Means Committee said:

> "* * * Your committee intends that any month in which a disabled person works for gain, or does work of a nature generally performed for gain, be counted as a month of trial work. Thus the services rendered in a month need not constitute substantial gainful activity in order for the month to be counted as part of the trial-work effort * * *".

It is estimated that raising the trial work period exempt amount as recommended by the Disability Advisory Council would increase title II program costs by $90 million over a 5-year period, as more people would be receiving benefit payments. In addition, the administrative costs would increase at the rate of an estimated $75 per beneficiary per year.

D. *Intended Effect.* We expect that the proposed increases in the amount of

earnings and services which constitute SGA and trial work would provide a more meaningful opportunity for title II beneficiaries to return to work. In addition, the increases would permit some disabled persons with earnings in excess of the present regulatory limit ($300 a month) but less than the amount in these proposed regulations, to receive benefits.

E. PROJECTED COSTS—PROGRAM COSTS

[Dollars in millions]

	Fiscal year—					Total
	1990	1991	1992	1993	1994	
Title II	$26	$42	$77	$87	$92	$324
SSI	$4	$13	$17	$20	$23	$77
Medicare	$1	$5	$10	$25	$35	$76
Medicaid	$20	$30	$35	$40	$45	$170
Administrative costs:						
Workyears	80	230	160	60	20	
Costs	$9	$23	$13	$5	$2	$52

The pattern of administrative costs reflects the one-time increase in the SGA amount. As general wage levels continue to rise while the SGA amount remains the same, there will be less incentive for working disabled persons to apply for benefits. As a result, the only large increases in claims and related workloads will occur in the first 2 or 3 years after the proposed change. Workload increases toward the end of the estimating period would be relatively small.

Although the costs are significant, we believe that these proposed changes are significant improvements in existing work incentives, and that they are fiscally responsible changes.

Paper Work Reduction Act

These proposed rules impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: May 26, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: June 27, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of chapter III of title 20 of the code of Federal Regulations is amended to read as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1574 is amended by revising paragraphs (b)(2)(v), (b)(2)(vi), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii) and (b)(4)(vii) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(v) Your earnings averaged more than $280 a month in calendar year 1979;

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than $500 a month in calendar years after 1989.

(3) * * *

(v) Your earnings averaged less than $180 a month in calendar year 1979;

(vi) Your earnings averaged less than $190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than $300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than $280 a month in calendar year 1979;

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than $500 a month in calendar years after 1989.

* * * * *

3. Section 404.1592 is amended by revising paragraph (b) to read as follows:

§ 404.1592 The trial work period.

* * * * *

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work to be "services" if in any calendar year after 1989 you earn more than $200 a month ($75 a month in the amount for calendar years 1979 through 1989, and $50 a month is the amount for calendar years before 1979). If you are self-employed, we will consider your activities "services" if in any calendar year after 1989, your net earnings are more than $200 a month ($75 a month is the amount for calendar years 1979 through 1989, and $50 a month is the amount for calendar years before 1979), or you work more than 40 hours a month in the business in any calendar year after 1989 (15 hours a month is the figure for calendar years before 1990). We generally do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

* * * * *

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.974 is amended by revising paragraphs (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (b)(3)(iv), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii), and (v)(4)(vii) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(iv) Your earnings averaged more than $260 a month in calendar year 1978;

(v) Your earnings averaged more than $280 a month in calendar year 1979;

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than $500 a month in calendar years after 1989.

(3) * * *

(iv) Your earnings averaged less than $170 a month in calendar year 1978;

(v) Your earnings averaged less than $180 a month in calendar year 1979;

(vi) Your earnings averaged less than $190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than $300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than $280 a month in calendar year 1979;

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than $500 a month in calenar years after 1989.

* * * * *

[FR Doc. 89-17506 Filed 7-24-89; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 73

[Order No. 1358-89]

Notification of Obligations of Agents of Foreign Governments

AGENCY: Department of Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The proposed regulations would define the notification obligations of agents of foreign governments under 18 U.S.C. 951. They set forth the date, place, time, manner and contents of the notification required by the statute, and provide specific guidance for foreign law enforcement personnel and other agents requiring special attention.

DATE: Comments must be received on or before August 24, 1989.

ADDRESS: Please submit written comments in duplicate to the Chief; Registration Unit; Internal Security Section; Criminal Division; United States Department of Justice; 1400 New York Avenue NW.; Room 9300; Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Joseph E. Clarkson, Chief; Registration Unit; Internal Security Section; Criminal Division; United States Department of Justice; 1400 New York Avenue, NW.; Washington, DC 20530; telephone (202) 786-4923.

SUPPLEMENTARY INFORMATION: The proposed regulations will provide guidance to agents of foreign governments who must notify the Attorney General of their agency status, and of the date, place, time, manner and content of the required notification. The regulations specify the custodian of these records in a manner calculated to assure timely notice to the Departments and Agencies most concerned.

This is not a major rule within the meaning of Exec. Order No. 12291. It will not have a significant effect on a substantial number of small businesses.

List of Subjects in 28 CFR Part 73

Foreign relations, Lobbying.

Accordingly, it is proposed to amend Title 28 of the Code of Federal Regulations by adding a new Part 73 to read as follows:

PART 73—NOTIFICATIONS TO THE ATTORNEY GENERAL BY AGENTS OF FOREIGN GOVERNMENTS

Sec.

Authority: 18 U.S.C. 951, 28 U.S.C. 509, 510.

§ 73.1 Definition of terms.

(a) The term "agent" means all persons acting as representatives of, or on behalf of, a foreign government who are not specifically excluded by the terms of the Act or the regulations thereunder.

(b) The term "foreign government" includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been regarded by the United States as a governing authority.

(c) The term "prior notification" means the notification letter or telex must be forwarded at least 10 days prior to commencing the services contemplated by the parties.

(d) When used in 18 U.S.C. 951(d)(1), the term "duly accredited" means that the sending State has notified the Department of State of the appointment and arrival of the diplomatic or consular officer involved, and the Department of State has not objected.

(e) When used in 18 U.S.C. 951(d)(2) and/or (3), the term "officially and publicly acknowledged and sponsored" means that the person described therein has filed with the Secretary of State a fully-executed notification of status with a foreign government; or is a visitor, officially sponsored by a foreign government, whose status is known and whose visit is authorized by an agency of the United States Government; or is an official of a foreign government on a temporary visit to the United States, for the purpose of conducting official business internal to the affairs of that foreign government; or where an agent of a foreign government is acting pursuant to the requirements of a Treaty, Executive Agreement, Memorandum of Understanding; or other understanding to which the United States or an agency of the United States is a party and which instrument specifically establishes another mechanism for notification of visits by agents and the terms of such visits.

(f) The term "legal commercial transaction," for the purpose of 18 U.S.C. 951(d)(4), means any exchange, transfer, purchase or sale, of any commodity, service or property of any kind, including information or intellectual property, not prohibited by federal or state legislation or implementing regulations.

§ 73.2 Exceptions.

(a) The exemption provided in 18 U.S.C. 951(d)(4) for a "legal commercial transaction" shall not be available to any person acting subject to the direction or control of a foreign government or official where such person is an agent of the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania or Cuba; or has been convicted of or entered a plea of nolo contendere to any offense under 18 U.S.C. 792-799, 831 or 2381, or under Section 11 of the Export Administration Act of 1979, 50 U.S.C. App. 2410.

(b) The provisions of 18 U.S.C. 951(e)(2)(A) do not apply if the Attorney General, after consultation with the Secretary of State, determines and reports to Congress that the national security or foreign policy interests of the United States require that these provisions do not apply in specific circumstances to agents of such country.

(c) The provisions of 18 U.S.C. 951(e)(2)(B) do not apply to a person

described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of nolo contendere.

§ 73.3 Form of Notification.

(a) Notification shall be made by the agent in the form of a letter or telex addressed to the Attorney General, directed to the attention of the Registration Unit of the Criminal Division, except for those agents described in paragraphs (b) and (c) of this section. The letter shall state that it is a notification under 18 U.S.C. 951, and provide the name or names of the agent making the notification, the firm name, if any, and the business address or addresses of the agent, the identity of the foreign government or official for whom the agent is acting, and a brief description of the activities to be conducted for the foreign government or official and the anticipated duration of the activities. Each notification shall contain a certification, pursuant to 28 U.S.C. 1746, that the notification is true and correct.

(b) Notification by agents engaged in law enforcement investigations or regulatory agency activity shall be in the form of a letter or telex addressed to the Attorney General, directed to the attention of Interpol—United States National Central Bureau. Notification by agents engaged in intelligence, counter-intelligence, espionage, counterespionage or counterterrorism assignment or service shall be in the form of a letter or telex addressed to the Attorney General, directed to the attention of the nearest FBI Legal Attache. In case of exceptional circumstances, notification shall be provided contemporaneously or as soon as reasonably possible by the agent or the agent's supervisor. The letter or telex shall include the information set forth in paragraph (a) of this section.

(c) Notification made by agents engaged in judicial investigations pursuant to treaties or other mutual assistance requests or letters rogatory, shall be made in the form of a letter or telex addressed to the Attorney General, directed to the attention of the Office of International Affairs, Criminal Division. The letter or telex shall include the information set forth in paragraph (a) of this section.

(d) Any subsequent change in the information required by paragraph (a) of this section shall require a new notification.

(e) Notification under 18 U.S.C. 951 shall be considered to have been made only if it has been done in compliance with paragraph (a) of this section, or if the agent has filed a registration under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*, which provides the information required by paragraph (a) of this section.

§ 73.4 Partial compliance not deemed compliance.

The fact that a notification has been filed shall not necessarily be deemed a full compliance with 18 U.S.C. 951 or these regulations on the part of the agent; nor shall it indicate that the Attorney General has in any way passed on the merits of such notification or the legality of the agent's activities; nor shall it preclude prosecution, as provided for in 18 U.S.C. 951, for failure to file a notification when due, or for a false statement of a material fact therein, or for an omission of a material fact required to be stated therein.

§ 73.5 Termination of notification.

(a) An agent shall, within 30 days after the termination of his agency relationship, advise the Attorney General of such change.

(b) All notifications pursuant to this Part will automatically expire five years from the date of the most recent notification.

(c) An agent, whose notification expires pursuant to (b) above, must file a new notification within 10 days if the relationship continues.

§ 73.6 Relation to other statutes.

The filing of a notification under this Section shall not be deemed compliance with the requirements of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*, nor compliance with any other statute.

Dated: July 18, 1989.

Dock Thornburgh,

Attorney General.

[FR Doc. 89-17344 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 203, 209 and 252

Department of Defense Federal Acquisition Regulation Supplement; DFARS Mandatory Code of Conduct Program

AGENCY: Department of Defense (DoD).

ACTION: Withdrawal of Proposed rule.

SUMMARY: A proposed rule directed by Secretary of Defense Carlucci regarding a Mandatory Code of Conduct Program was published in the **Federal Register** on December 29, 1988 (53 FR 52744). After consideration of comments on the concept of a mandatory code of conduct, Secretary of Defense Cheney has determined that, to be meaningful, corporate codes of conduct must be adopted by contractors voluntarily, not mandated in procurement regulations. The proposed rule of December 29, 1988 is hereby withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89-17300 Filed 7-24-89; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 54, No. 141
Tuesday, July 25, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-113]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Alfalfa Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Northrup King Company, to allow the field testing in the State of California of alfalfa plants genetically engineered to express a gene which provides resistance to the glufosinate-class of herbicides. The assessment provides a basis for the conclusion that the field testing of these genetically engineered alfalfa plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the qualify of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-038-03.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Northrup King Company, of Stanton, Minnesota, has submitted an application for a permit for release into the environment, to field test alfalfa plants genetically engineered to express a gene which provides resistance to the glufosinate-class of herbicides. The field trial will take place in Woodland, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the alfalfa plant under the conditions described in the Northrup King Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Northrup King Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene from *Streptomyces viridochromogenes* has been inserted into an alfalfa chromosome. The expression of this gene provides resistance to the glufosinate-class of herbicides. In nature, genetic material contained in a chromosome is generally transferred to another sexually compatible plant by cross-pollination. In this field trial, no introduced gene can spread to another plant by cross-pollination, because the genetically engineered alfalfa plants will be mowed to prevent flower formation. Thus, no pollen will be produced by any alfalfa plant in this experiment.

2. Neither the glufosinate acetyl transferase gene itself, nor its gene product confers on alfalfa any plant pest characteristic.

3. The bacterium *Streptomyces viridochromogenes*, from which the glufosinate acetyl transferase gene was isolated, is not a plant pest.

4. The vector used to transfer the glufosinate acetyl transferase gene to alfalfa plant cells has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from the DNA of a tumor inducing (Ti) plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

5. The vector agent *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the glufosinate acetyl transferase gene into alfalfa plant cells. The vector agent has been chemotherapeutically eliminated and shown to be no longer associated with any regenerated alfalfa plant.

6. Horizontal movement or gene transfer of the glufosinate acetyl transferase gene is not possible. The vector acts by delivering and inserting the gene into an alfalfa chromosome (i.e., chromosomal DNA). No mechanism for horizontal movement is known to exist in nature to move an inserted gene

from a chromosome of a tranformed plant to any other organism.

7. The size of the field test plot is small and will be located on a private research farm in a rural area which will provide good security.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environment Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC., this 19th day of July 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–17271 Filed 7–24–89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89–128]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Office, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
89–172–01	New York State Agricultural Experiment Station.	06–21–89	Cucumbers genetically engineered to express the coat protein gene of cucumber mosaic virus (CMV).	

Done in Washington, DC., this 19th day of July 1989

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–17272 Filed 7–24–89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Saltonstall-Kennedy Grant Application, Project Quarterly and Final Reports

Form Number: None; OMB–0648–0135

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 200 respondents; 2,572 reporting hours; average hours per response—5.8 hours

Needs and Uses: Under the Saltonstall–Kennedy Act funds are available for projects that will strengthen or develop the U.S. fishing industry. Application information must be submitted to decide which projects should be funded. Quarterly and final reports are used to ensure monies are properly used and to access the results of the project.

Affected Public: Individuals or households, State or local governments, business or other for profit, Federal agencies or employees, non-profit institutions, and small businesses or organizations

Frequency: On occasion, quarterly

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Russell Scarato, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 19, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–17330 Filed 07–24–89; 8:45 am]

BILLING CODE 3510-CW-M

Export Administration

[Docket No. OEE–1–89.01]

Action Affecting Export Privileges: Roger van Alphen

Summary

Pursuant to the July 12, 1989, Report and Recommendation of the Administrative Law Judge (ALJ), a copy of which is attached hereto and affirmed by me, the appeal of Roger van Alphen, Populieresloantje 8, Huizen, Netherlands (hereinafter Respondent), regarding a Temporary Denial Order issued April 6, 1989 is denied and the Temporary Denial Order is affirmed.

Order

On July 12, 1989, the ALJ entered his Report and Recommendation in the above-referenced matter. The Report and Recommendation, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Report and Recommendation of the ALJ. The Respondent's appeal is denied and the Temporary Denial Order is affirmed.

This constitutes final agency action in this matter.

Date: July 18, 1989.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

Report and Recommendation

Appearance for Respondent: J.H. Wittop Koning, Esq., Geelkerken & Linskens C.S.-Advocaten, 2311 Ex Leiden, Rapenburg 36, Postbus 2020, 2301 CA Leiden, The Netherlands

Appearance for Agency: Anthony K. Hicks, Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3837, 14th & Constitution Ave., NW., Washington, DC 20230

Preliminary Statement

Respondent Roger van Alphen appealed June 27, 1989 a temporary denial order issued April 6, 1989 (54 FR 14667 (April 12, 1989)) ("the Temporary Denial Order") that denied U.S. export privileges to him and other named parties. The Temporary Denial Order was issued *ex parte* by the Commerce Department's Assistant Secretary for Export Enforcement upon request of the Office of Export Enforcement ("the Agency") of the Department's Bureau of Export Administration. The authority for the issuance was the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended ("the Act"), and the Export Administration Regulations ("the Regulations").[1]

After Respondent filed his appeal, the Office of the Assistant Secretary for Export Enforcement submitted a copy of the record on the basis of which the Assistant Secretary decided to issue the Temporary Denial Order, and the Agency filed a reply to Respondent's appeal. This Report and Recommendation on the appeal is issued on the tenth working day after the June 27, 1989 filing of Respondent's appeal, in accord with the time schedule prescribed for resolving the appeal by section 13(d)(2) of the Act (50 U.S.C. app. 2412(d)(2)) and Section 788.19(e)(4) of the Regulations.

Discussion

The Temporary Denial Order denied for 180 days the U.S. export privileges of Respondent and three other named individuals and the companies through which they do business. According to the Temporary Denial Order, the Agency had reason to believe that, from a date unknown to December 9, 1988 these individuals tried to export equipment from the United States to Bulgaria knowing that such equipment was unlikely to be authorized by the Department for such export, and that on December 9, 1989 they actually attempted such an export by falsely declaring that the export destination was The Netherlands and that the equipment was general license G–DEST.

Further according to the Temporary Denial Order, each of the four individuals had been indicted in a U.S. District Court in Massachusetts for his role in this unlawful export activity, and the Agency had reason to believe also that they had access to large sums of money that would be used, and also to Belgian contacts that would if necessary be used, to attempt such unlawful exports to Bulgaria in the future. Based on this showing by the Agency, the Temporary Denial Order stated that its issuance was necessary in the public interest to prevent an imminent violation of the Act and the Regulations.

The essence of Respondent's appeal of the Temporary Denial Order was "that he is in no way involved in any business of the * * * [other individuals] mentioned in [the Temporary Denial Order]" (Appeal 1). "His connection with said persons is limited to being private chauffeur of * * * [one of them] and handcarrying several cheques for * * * [the other two]" (*id.*).

The Agency's reply supplied a copy of the indictment mentioned in the Temporary Denial Order; and the Agency's reply added that two of the four individuals named therein (not Respondent) had been arrested, and that one of these two has pled guilty to the charges. The Agency's evidence of Respondent's activities was chiefly an affidavit of a U.S. Customs Special Agent that reported on the debriefing of the arrested individual who has pled guilty. According to this affidavit, this individual said that Respondent was present at meetings where the export activity at issue was discussed, that he delivered to one of the four individuals checks written by another of the four in payment for the equipment, that when one of the four was hospitalized Respondent acted as his liaison with the export activity and updated him every two days, and that Respondent was to receive $10,000 for his efforts.

As to possible future unlawful exports, in this debriefing this arrested individual reportedly spoke also of another of the four indicted individuals. This individual was said to have a large sum of money dedicated to acquiring more such equipment for export to Bulgaria, and also to have previously bribed Belgian customs officials to allow exports to be unlawfully diverted to Bulgaria, and to have claimed, that he would utilize these same officials for exporting this new equipment to Bulgaria if necessary. The Agency suggested additionally that three of the four indicted individuals are at large (the one who was arrested and pled guilty is now out on bail pending sentencing), and thus these three remain free to continue their prior export activity. In view of their past activities and Respondent's role in these activities, the Agency argued that he should remain subject to the Temporary Denial Order.

Conclusion

The evidence submitted by the Agency and summarized above shows a reasonable possibility that Respondent together with three other individuals engaged in efforts to export equipment unlawfully from the United States to Bulgaria. This evidence shows further that Respondent and these other individuals may have the means to continue such efforts. Respondent's appeal, containing simply a denial of his involvement in such efforts, fails to overcome the Agency's evidence. Thus the undersigned concludes that it is reasonable to believe that the Temporary Denial Order is required in the public interest to prevent an imminent violation of the Act and the Regulations.

Consequently the Recommendation of the undersigned is that Respondent's appeal be denied and that the Temporary Denial Order be affirmed. This Report and Recommendation shall constitute the final resolution of this appeal if and when the Recommendation is accepted by the Secretary pursuant to § 788.19(e)(5) of the Regulations.

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

Date: July 12, 1989.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 89-17317 Filed 7-24-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of initiation of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: July 25, 1989.

FOR FURTHER INFORMATION CONTACT: Richard W. Moreland, Office of Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786/2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22 (a)(1), (a)(2), (a)(3), of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with § 353.22(c), of the Department's regulations, we are initiating administrative reviews of the following antidumping duty orders and findings. We intend to issue the final results of these reviews no later than June 30, 1990.

Antidumping duty proceedings and firms	Periods to be reviewed
Canada:	
Oil Country Tubular Goods	
A-122-506	
Cappco Tubular Products	6/1/88—5/31/89
Christianson Pipe Ltd.	
Stelco, Inc.	
Canada:	
Red Raspberries	
A-122-401	
Jesse Processing, Ltd.	6/1/88—5/31/89
Valley Berries, Inc.	
Marco Estates/Landgrow	
B.C. Blueberry Co-Op	
Hungary:	
Tapered Roller Bearings	
A-437-601	
Magyar Gordulocsapagy Muvek (MGM)	6/1/88—5/31/89
Japan:	
Certain Industrial Forklift Trucks	
A-588-703	
Toyota Motor Corp.	11/24/87—5/31/89
Nissan Motor Co. Ltd.	
Mitsubishi Heavy Ind.	
Sumitomo—Yale Co. Ltd.	
Toyo Umpanki	
Komatsu	
Japan:	
Fishnetting of Man-Made Fibers	
A-588-029	
Mitsui	6/1/88—5/31/89
Hakodate Seimo	
Benny Toyama Corp	
Amikan	
PRC:	
Tapered Roller Bearings	
A-570-601	
China National Machinery and Equipment Import and Export Corp	6/1/88—5/31/89
Premier Bearing & Equipment, Ltd.	
Harbin Bearing Factory	
Luayang Bearing Factory	
Yantai Bearing Factory	
Xiang Yang Bearing Factory	
Guinyang Bearing Factory	
Northwest Bearing Plant	
Hai Lin Bearing Factory	
Haihong Bearing Factory	
Yishan Bearing Factory	
Romania:	
Tapered Roller Bearings	
A-485-602	
Technoimportexport	6/1/88—5/31/89
Taiwan:	
Certain Circular Welded Carbon Steel Pipes and Tubes	
A-583-008	
Yieh Hsing	5/1/88—11/16/88
Taiwan:	
Fireplace Mesh Panels	
A-583-003	
Yeh Sheng	6/1/88—5/31/89
Tahchung	
Taipoly Int'l	
Dalvey Products	

Countervailing Duty Proceedings

We received no requests for review of countervailing duty orders and findings with June anniversary dates.

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.22(c) and 355.22(c) of the Commerce Department's antidumping and countervailing duty regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) and December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 353.22(c) and 19 CFR 355.22(c)).

Date: July 18, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-17386 Filed 7-24-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-081]

Polyvinyl Chloride Sheet and Film from Taiwan; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Finding

AGENCY: International trade Administration/Import Administration Commerce.

ACTION: Notice of final results of changed circumstances administrative review and revocation of antidumping finding.

SUMMARY: On May 3, 1989, the Department of Commerce published the preliminary results of its changed circumstances administrative review and tentative determination to revoke the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The review covers one manufacturer/exporter of this merchandise to the United States and the period June 1, 1986 through May 31, 1987.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: July 25, 1989.

FOR FURTHER INFORMATION CONTACT: Linnea Bucher or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 18919) the preliminary results of its changed circumstances administrative review and tentative determination to revoke the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("The Tariff Act").

Scope of the Review

Imports covered by this review are shipments of unsupported, flexible,

calendered polyvinyl chloride (PVC) sheet, film, and strips, over 6 inches in width and over 18 inches in length and at least 0.0002 inch but not over 0.020 inch in thickness. During the review period such merchandise was classifiable under item number 771.4312 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item number 3920.42.50 of the Harmonized Tariff Schedule.

The review covers one exporter of this merchandise to the United States, Orchard Corporation, and the period June 1, 1986 through May 31, 1987.

Final Results of Review and Revocation of the Antidumping Finding

We invited interested parties to comment on the preliminary results of the changed circumstances administrative review and tentative determination to revoke the antidumping finding. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

For the reasons set forth in the preliminary results of changed circumstances administrative review and tentative determination to revoke the antidumping finding, we are satisfied that the finding is no longer of interest to interested parties. Accordingly, we revoke the antidumping finding on PVC sheet and film from Taiwan. The revocation applies to all unliquidated entries of this merchandise of Taiwan origin entered, or withdrawn from warehouse, for consumption or after June 1, 1986.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1986, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This changed circumstances administrative review, revocation of the antidumping finding, and notice are in accordance with section 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and 19 CFR 353.53 and 353.54 (1988).

Date: July 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-17385 Filed 7-24-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) will host a public workshop on September 25, 1989, to provide interested parties an opportunity to participate in the development of requirements for accreditation of testing facilities that perform computer applications testing, specifically testing of software products for conformance to the Federal Information Processing Standard (FIPS) 151, the Portable Operating System Interface for Computer Environments (POSIX).

DATE: The workshop will be held on September 25, 1989, from 9:00 a.m. to 4:00 p.m. Those who wish to receive draft material prior to the meeting and plan to attend the meeting should contact the NIST office specified below no later than August 25, 1989.

Place: The workshop will be held at the National Institute of Standards and Technology, Room B165, Building 221, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Jeffrey Horlick, Project Leader, Laboratory Accreditation, NIST, Building 411, Room A124, Gaithersburg, MD 20899, (301) 975-4020, FAX (301) 975-3839.

SUPPLEMENTARY INFORMATION: On May 1, 1989, James H. Burrows, Director, National Computer Systems Laboratory (NCSL) at NIST, forwarded a request to the Director of NIST for support from the National Voluntary Laboratory Accreditation Program (NVLAP) by the establishment of a NVLAP program to accredit testing laboratories that test the conformance of software products to the Portable Operating System Interface for Computer Environments (POSIX) family of Federal Information Processing Standards (FIPS). To quote from the request:

"The laboratories initially will test software products for conformance to the FIPS 151 (POSIX) using the National Institute of Standards and Technology (NIST) developed NIST POSIX Conformance Test Suite (NIST-PCTS). The test results will be evaluated by the National Computer Systems Laboratory (NCSL) as a basis for issuing a certificate of conformance to the FIPS 151. FIPS 151 is based on the IEEE Standard 1003.1-1988 which was developed by that voluntary, consensus driven, committee. It is designed for use by computing professionals involved in system and applications software development and implementation. The test assertions from which the NIST-PCTS was developed are based on the IEEE 1003.3 committee's work on test methods for measuring conformance to POSIX. The NIST-PCTS is available through the National Technical Information Services (NTIS) and will be maintained by NCSL.

The need for a POSIX standard is pointed out by the lack of portability of software between different machines and operating systems, thus causing costly problems in upgrading hardware and software systems. POSIX provides the functionality required to support source code portability for a wide range of applications across different environments by providing a standard interface between applications and the operating systems. An objective, accredited third party testing program is needed to provide credibility to vendor claims of conformance to the standard. NVLAP would provide the assurance of having qualified testing laboratories for these functions. The commercial endeavors established would yield enhancements and value added services to the testing process. Currently, there is no accredited program for this determination of conformance. While NCSL could provide the objectivity, NCSL does not have the resources to perform this testing."

NVLAP currently offers accreditation to laboratories testing for conformance of software to selected software standards. (See notice in **Federal Register** Vol. 53, No. 140, page 27543, announcing program based on X.25 Link and Network Layer Protocols, five Packet Switching High Level Protocols, and AUTODIN Mode I Protocol.) The request from NCSL has been considered under the NVLAP Procedures (Title 15, Part 7, CFR 7.18, addition to an established laboratory accreditation program), and has been found feasible and relevant to the existing program. Program feasibility has been established by defining the accreditation requirements necessary to demonstrate capability to test software against FIPS 151.

The following plans for the workshops have been established:

1. Purpose. The workshop will provide all interested persons with an opportunity to review and participate in establishing technical criteria, requirements, and procedures for evaluation and accreditation of applicant laboratories.

2. Procedure: The workshop will be an informal meeting. The presiding NIST chairperson will allocate the time available for discussion of each issue to be addressed, and exercise such authority as may be necessary to insure the equitable and efficient conduct of the workshop and to proceed in an orderly manner.

3. Provisions: This workshop will be open to the public.

Documents in Public Record

A summary record of the meeting will be prepared and made available for inspection and copying in the NVLAP program office, Building 411, Room A124, Gaithersburg, Maryland.

Raymond G. Kammer,

Acting Director.

Date: July 20, 1989.

[FR Doc. 89-17372 Filed 7-24-89; 8:45 am]

BILLING CODE 3510-13-M

National Fire Codes; Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards (NBS), on behalf of NFPA is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the **Federal Register** approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Proposals should be submitted on forms available from the NFPA Standards Administration Office. Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 p.m. local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a Technical Committee Report that will include copies of the written proposals that have been received and an account of their disposition by the NFPA Committee. Each person who has submitted a written proposal will receive a copy of the Technical Committee Report.

Dated: July 20, 1989.

Raymond G. Kammer,

Acting Director.

NFPA No. and Title	Prop. closing date
NFPA 1-1987, Fire Prevention Code.	July 14, 1989
NFPA 12A-1989, Halogenated Fire Extinguishing Agent Systems.	Sept. 15, 1989
NFPA 13-1989, Installation of Sprinkler Systems.	Nov. 10, 1989
NFPA 13A-1987, Maintenance of Sprinkler Systems.	Nov. 10, 1989
NFPA 13D-1989, Sprinkler Systems in One- and Two-Family Dwellings & Mobile Homes.	Nov. 10, 1989
NFPA 13R-1989, Sprinkler Systems in Residential Occupancies Up to 4 Stories.	Nov. 10, 1989
NFPA 31-1987, Oil Burning Equipment.	July 20, 1990
NFPA 35-1987, Manufacture of Organic Coatings.	July 15, 1990
NFPA 36-1988, Solvent Extraction Plants.	Open
NFPA 45-1986, Fire Protection for Laboratories Using Chemicals.	Jan 19, 1990
NFPA 49-1975, Hazardous Chemicals Data.	July 14, 1989
NFPA 68-1988, Guide for Venting of Deflagrations.	Jan. 19, 1990
NFPA 69-1986, Explosion Prevention System.	Jan 19, 1990
NFPA 71-1989, Central Station Signaling Systems.	Jan. 19, 1990
NFPA 79-1987, Industrial Machines.	Jan. 19, 1990
NFPA 85B-1989, Prevention of Furnace Explosions in Natural Gas-Fired Multiple Burner Boiler Furnaces.	Jan 19, 1990
NFPA 85D-1989, Prevention of Furnace Explosions in Fuel Oil-Fired Multiple Burner Boiler-Furnaces.	Jan 19, 1990
NFPA 85E-1985, Prevention of Furnace Explosions in Pulverized Coal-Fired Multiple Burner Boiler-Furnaces.	Jan. 19, 1990
NFPA 85G-1987, Furnace Implosions in Multiple Burner Boiler-Furnaces.	Jan. 19, 1990
NFPA 86C-1987, Industrial Furnaces Using Special Processing Atmosphere.	Jan. 19, 1990
NFPA 92A-1988, Smoke Control Systems.	July 14, 1989
NFPA 101M-1988, System Approaches to Life Safety.	Open
NFPA 171-1986, Visual Alerting Symbols for General Public Firesafety.	July 14, 1989
NFPA 172-1986, Firesafety Symbols for Architectural & Engineering Drawings.	July 14, 1989
NFPA 174-1986, Firesafety Symbols for Risk Analysis Diagrams.	July 14, 1989
NFPA 178-1986, Symbols for Fire Fighting Operations.	July 14, 1989
NFPA 204M-1985, Guide for Smoke and Heat Venting.	July 14, 1989
NFPA 220-1985, Standard Types of Building Construction.	July 14, 1989
NFPA 224-1985, Homes and Camps in Forest Areas.	Jan. 19, 1990
NFPA 232-1986, Protection of Records.	July 14, 1989
NFPA 232AM-1986, Fire Protection for Archives and Records Centers.	July 14, 1989
NFPA 263-1986, Test Methods For Heat Release Rates of Materials.	July 14, 1989
NFPA 295-1985, Wildfire Control.	July 14, 1989
NFPA 296-1986, Air Operations for Forest, Brush & Grass Fires.	July 14, 1989
NFPA 297-1986, Telecommunications Systems.	July 14, 1989
NFPA 299-Proposed, Fire Hazard Assessment & Development Standards for Wildland Fire Areas.	Jan. 19, 1990
NFPA 321-1987, Classification of Flammable and Combustible Liquids.	July 14, 1989
NFPA 325M-1984, Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids.	July 14, 1989
NFPA 327-1987, Cleaning or Safeguarding Small Tanks and Containers.	July 15, 1990
NFPA 328-1987, Control of Flammable & Combustible Liquids and Gases in Manholes and Sewers.	July 15, 1990
NFPA 329-1987, Underground Leakage of Flammable & Combustible Liquids.	July 15, 1990
NFPA 395-1988, Storage of Flammable & Combustible Liquids on Farms and Isolated Construction Projects.	Open

NFPA No. and Title	Prop. closing date
NFPA 402M-1989, Aircraft Rescue & Fire Fighting Operational Procedures.	Jan. 19, 1990
NFPA 403-1988, Aircraft Rescue and Fire Fighting Services at Airports and Heliports.	Oct. 6, 1989
NFPA 424M-1986, Airport/Community Emergency Planning.	Oct. 6, 1989
NFPA 491M-1986, Hazardous Chemical Reactions.	July 14, 1989
NFPA 497A-1986, Classification of Class 1 Hazardous Locations in Chemical Processing Areas.	July 14, 1989
NFPA 501A-Fire Safety Criteria for Manufactured Home Installations.	Jan. 19, 1990
NFPA 502-1987, Fire Protection for Limited Access Highways, Tunnels, Bridges, Elevated Railways Air Right Structures.	Jan. 19, 1990
NFPA 600-1986, Private Fire Brigades.	Jan. 19, 1990
NFPA 601-1986, Guard Service in Fire Loss Prevention.	Jan. 19, 1990
NFPA 602-1986, Guard Operations in Fire Loss Prevention.	Jan. 19, 1990
NFPA 703-1985, Fire Retardant Treatment of Building Materials.	July 14, 1989
NFPA 801-1986, Facilities Handling Radioactive Materials.	July 14, 1989
NFPA 903M-1986, Fire Reporting Property Survey Manual.	Jan. 18, 1991
NFPA 904M-1986, Incident Follow-Up Report Manual.	Jan. 18, 1991
NFPA 911-1985, Protection of Museums and Museum Collections.	Jan. 19, 1990
NFPA 921M-Proposed, Investigation of Fires.	Jan. 19, 1990
NFPA 1001-1987, Fire Fighter Professional Qualifications.	Jan. 19, 1990
NFPA 1004-1985, Fire Fighter Medical Technicians Professional Qualifications.	July 14, 1989
NFPA 1031-1987, Fire Inspector Professional Qualifications.	July 14, 1989
NFPA 1033-1987, Fire Investigator Professional Qualifications.	Jan. 19, 1990
NFPA 1033-1987, Fire Investigator Professional Qualifications.	Jan. 19, 1990
NFPA 1035-1987, Public Fire Educator Professional Qualifications.	July 20, 1990
NFPA 1221-1988, Public Fire Service Communications Service.	Jan. 19, 1990
NFPA 1402-1985, Building Training Centers.	July 20, 1990
NFPA 1461-1986, Criteria for Accreditation of Fire Protection Education Programs.	July 14, 1989
NFPA 1914-1988, Testing Fire Department Aerial Devices.	Jan. 19, 1990
NFPA 1963-1985, Screw Treads & Gaskets for Fire Hose Connections.	July 14, 1989
NFPA 1971-1986, Protective Clothing for Structural Fire Fighting.	Oct. 2, 1989
NFPA 1972-1987, Helmets for Structural Fire Fighting.	Jan. 18, 1991
NFPA 1974-1987, Protective Footwear for Structural Fire Fighting.	Jan. 18, 1991
NFPA 1976-Proposed, Crash/Fire/Rescue Protective Clothing.	Nov. 15, 1989

[FR Doc. 89-17371 Filed 7-24-89; 8:45 am]
BILLING CODE 3510-13-M

National Fire Codes; Request for Comments on National Fire Protection Association Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1989 Annual Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards (NBS), on behalf of NFPA is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The Technical Committee Reports are available for distribution on July 28, 1989. Comments received on or before October 6, 1989 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESS: The 1990 Annual Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the **Federal Register** approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 6, 1989 will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by March 23, 1990, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, May 20-24, 1990, in San Antonio, TX, by NFPA members.

Dated: July 20, 1989.

Raymond G. Kammer,

Acting Director.

1990 Annual Meeting Technical Committee Reports

(P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision)

NFPA No.	Title	Action
11C	Mobile Foam Apparatus	R
12B	Halogenated Fire Extinguishing Agent Systems-Halon 1211.	P

NFPA No.	Title	Action
15	Water Spray Fixed Systems for Fire Protection.	R
18	Wetting Agents	R
30	Flammable & Combustible Liquids Code.	P
30A	Automotive & Marine Service Station Code.	P
30B	Aerosol Products	N
43A	Liquid & Solid Oxidizing Materials.	C
70B	Electrical Equipment Maintenance.	P
72	Installation, Maintenance & Use of Protective Signaling Systems.	C
72A	Local Protective Signaling Systems.	C
72B	Auxiliary Protective Signaling Systems.	C
72C	Remote Station Protective Signaling Systems.	C
72D	Proprietary Protective Signaling Systems.	C
72E	Automatic Fire Detectors	P
72F	Emergency Voice Alarm Communication Systems.	C
86D	Industrial Furnaces Using Vacuum as an Atmosphere.	C
88A	Parking Structures	R
88B	Repair Garages	R
121	Mobile Surface Mining Equipment.	P
122	Flammable & Combustible Liquids Within Underground Mines.	R
123	Underground Coal Mines	C
231	General Storage	P
251	Fire Tests of Building Construction and Materials.	P
252	Fire Tests of Door Assemblies	P
253	Critical Radiant Flux of Floor Covering System Using Radiant Heat Energy.	P
255	Surface Burning Characteristics of Building Materials.	P
257	Fire Tests of Window Assemblies.	P
262	Fire & Smoke Characteristics of Electrical Wires and Cables.	R
264A	Heat Release Rates of Upholstered Furniture.	N
303	Marinas and Boatyards	C
307	Marine Terminals, Piers & Wharves.	P
312	Vessels During Construction, Repair & Lay-Up.	C
407	Aircraft Fuel Servicing	C
409	Aircraft Hangars	P
414	Aircraft Rescue and Fire Fighting Vehicles.	P
417	Aircraft Loading Walkways	R
418	Roof-top Heliport Construction and Protection.	C
495	Explosive Materials	P
498	Explosives Motor Vehicle Terminals.	R
1141	Fire Protection in Planned Building Groups.	C
1561	Fire Department Incident Management System.	N
1975	Station/Work Uniforms for Fire Fighters.	C
1983	Fire Service Life Safety Rope, Harnesses, and Hardware.	C
1993	Splash-Protective Suits for Nonflammable Hazardous Chemical Situations.	N

[FR Doc. 89-17370 Filed 7-24-89; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a public meeting on August 2-3, 1989, at the Radisson Hotel, 700 King Street, Wilmington, DE. The Council will begin meeting on August 2 at 10 a.m., and will adjourn on August 3 at approximately 1 p.m.

The Council will discuss the National Marine Fisheries Service's (NMFS) proposed striped bass management measures, consider amendments to its Statement of Operating Practices and Procedures (SOPPs), and discuss other fishery management and administrative matters. The public meeting may be lengthened or shortened depending upon progress on the agenda. The Council also may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Date: July 19, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-17287 Filed 7-24-89; 8:45 am]
BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a public meeting of the Swordfish Advisory Panel at the Council's headquarters (address below), beginning on August 16, 1989, at 1 p.m., and concluding on August 17, at noon. The advisory panel will receive a briefing on the swordfish stock assessment and review management options for Amendment #1 to the fishery management plan for Atlantic swordfish. The advisory panel also will formulate recommendations to the Council regarding the management measures contained in the proposed amendment. A detailed agenda will be available to the public on or about August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Carrie R. F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: July 19, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89-17288 Filed 7-24-89; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability (NOA) of the Final Environmental Impact Statement for the Construction and Operation of a Chemical Munitions Disposal Facility at Tooele Army Depot, Utah

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: This announces the notice of availability (NOA) of the FEIS on the potential impact of the design, construction, operation and closure of the proposed chemical agent demilitarization facility at Tooele Army Depot, Utah. The proposed facility will be used to demilitarize all chemical agents and munitions currently stored at the Tooele Army Depot. The Final Environmental Impact Statement (FEIS) examines the potential impacts of on-site incineration and the "no action" alternatives. The "no action" alternative is considered to be deferral of demilitarization with continued storage of the agents and munitions at Tooele Army Depot.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR, No. 38, pp. 5816-17) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. The Department of the Army published a Notice of Intent on August 3, 1988 (53 FR, No. 149, pp. 29255-29256) which provided notice that, pursuant to the National Environmental Policy Act (NEPA) and implementing regulations, it was preparing a Draft Environmental Impact Statement (DEIS) for the Tooele chemical munitions disposal facility. The Department of the Army prepared an EIS to assess the site-specific health

and environmental impacts of on-site incineration of chemical agents and munitions at Tooele Army Depot. On May 5, 1989, the Department of the Army published a Notice of availability (54 FR, No. 86, page 19435) which provided notice that the DEIS was available for public comment. Minimal comments were received on the DEIS. The FEIS for Tooele, which incorporates these comments, is now available. Copies may be obtained by writing the Program Manager for Chemical Demilitarization, ATTN: SAIL–PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010–5401.

ADDITIONAL INFORMATION: The Environmental Protection Agency (EPA) will also publish a Notice of Availability for this FEIS in the **Federal Register.**

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&L).

[FR Doc. 89–17332 Filed 7–24–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Fund for the Improvement and Reform of Schools and Teaching

AGENCY: Fund for the Improvement and Reform of Schools and Teaching.

ACTION: Notice of an amendment to a partially closed meeting.

DATES: July 27, 1989, 9:00 a.m.–5:00 p.m. (Open); July 28, 1989, 9:00 a.m.–5:00 p.m. (Closed).

SUMMARY: This is an amendment to the notice that appeared in the **Federal Register**, on Wednesday, June 28, 1989, (54 FR 27204). This amendment sets forth the change in the schedule and proposed agenda of the upcoming meeting of the Fund for the Improvement and Reform of Schools and Teaching Board.

The meeting was originally scheduled to begin at 8:30 a.m. on both days with the afternoon portion of the meetings being closed. The Board will now convene in open session from 9:00 a.m. to 5:00 p.m. on July 27 and will conclude with a closed meeting on July 28 from 9:00 a.m. to 5:00 p.m..

Additional agenda items for the open meeting session include:

Discussion/Approval of Minutes of the January Meeting.
New Members/Introduction of Staff
Committee Management Briefing
Selection of Members to a Subcommittee to the Board
Delegation of Authority by Subcommittee
Selection Process for Grant Application Program Administration
1990 Program Priorities

Bruno V. Manno,

Acting Assistant Secretary, Educational Research and Improvement.

[FR Doc. 89–17328 Filed 7–24–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Filed with the Commission

July 19, 1989.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 4684–010.

c. Date Filed: April 12, 1989.

d. Applicant: Long Lake Energy Corp. and Stillwater Hydro Partners L.P.

e. Name of Project: Stillwater Project.

f. Location: On the Hudson River in Saratoga and Rensselaer Counties, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Sandy Hartman, Long Lake Energy Corp., 420 Lexington Ave., New York, NY 10170, (212) 986–0440.

i. FERC Contact: Robert Bell (202) 376–9237.

j. Comment Date: August 10, 1989.

k. Description of Project: On May 20, 1987, a license was issued to Long Lake Energy Corp. (licensee), to construct, operate, and maintain the Stillwater Project No. 4684. The Licensee intends to transfer the license to Stillwater Hydro Partners L.P. (transferee), which will purchase, construct and operate the project. The transferee agrees to accept the terms and conditions of the license as if it were the original license. The transfer is requested to facilitate the financing and construction of the project.

1. This notice also consists of the following standard paragraphs: B and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

c. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments," "Recommendations for Terms and Conditions," "Notice of Intent to File Competing Application," "Competing Applications," "Protest" or "Motion to Intervene," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An Additional copy must be sent to: The Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17312 Filed 7–24–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–1731–000, et al.]

North Penn Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. North Penn Gas Company

[Docket No. CP89–1731–000]

July 14, 1989.

Take notice that on July 3, 1989, North Penn Gas Company (North Penn), 76–90 Mill Street, Port Allegheny, Pennsylvania 16743, filed in Docket No. CP89–1731–000, an application pursuant to Section 7(c) of the Natural Gas Act, for authorization to construct and operate approximately 11 miles of 8-inch pipeline and appurtenant facilities to connect its storage facilities located in Delmar Township, Tioga County, Pennsylvania to a segregated segment of its system located in Richmond Township, Tioga County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

North Penn states that the proposed facilities would permit it to deliver gas from its existing underground storage facility into the eastern portion of its system. North Penn further states that the eastern portion of its system consists of its Mansfield and Troy distribution districts which comprises approximately 26% of its total annual load requirements. By exposing storage to this segment of its system, North Penn asserts that it can reduce its dependency on its pipeline suppliers to meet the peak day requirements of the segment which can now only be met with pipeline supplied gas.

North Penn estimates that it would cost approximately $2.4 million to construct the proposed facilities. North Penn states that such costs would be financed initially with short-term loans and funds on hand and that permanent financing would be a part of its overall long-term financing program.

Comment date: August 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Equitrans, Inc.

[Docket No. CP89–1793–000]

July 14, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1793–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texas-Ohio Gas, Inc. (Texas-Ohio), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated March 27, 1989, under its Rate Schedule ITS, it proposes to transport up to 2,940 Mcf per day of natural gas for Texas-Ohio. Equitrans states that it would transport the gas from receipt points in Nicholas and Fayette Counties, West Virginia, and Allegheny County, Pennsylvania, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas on behalf of Texas-Ohio at the interconnect between Equitrans/Texas Eastern Transmission Corporation (TETCO) at TETCO's Measuring Station 009 and Equitrans' Crayne Farm Measuring Station, Greene County, Pennsylvania; and the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and Perrymont Regulator, Allegheny County, Pennsylvania, as shown in Exhibit "B" of the agreement.

Equitrans advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89–3512–000. Equitrans further advises that it would transport 96 Mcf on an average day and 35,040 Mcf annually.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP89–1748–000]

July 14, 1989.

Take notice that on July 7, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–1748–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon the sale of natural gas to the U.S. Army Corps of Engineers Sunflower Army Ammunition Plant Receiver Station (Sunflower) in Desota, Johnson County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that Sunflower requested the cancellation of their natural gas sales agreement in an October 23, 1986, letter, because it had moved the office served by WNG and no longer needed the gas. WNG also states that it provided the pipeline tap, however, Sunflower owns all the other facilities; thus, no facilities would be abandoned.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP89–1762–000]

July 14, 1989.

Take notice that on July 11, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1762–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Elf Aquitaine Operating, Inc. (Elf Aquitaine), a marketer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated March 22, 1989, under its Rate Schedule ITS, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Elf Aquitaine. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from receipt points in Louisiana and offshore Louisiana, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in Louisiana, offshore Louisiana, and Illinois, as shown in Exhibit "B" of the agreement.

Natural advises that service under § 284.223(a) commenced May 16, 1989, as reported in Docket No. ST89–4129–000. Natural further advises that it would transport 15,000 MMBtu on an average day and 5,475,000 MMBtu annually.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89–1759–000]

July 14, 1989.

Take notice that on July 10, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1759–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Westvaco Corporation (Westvaco), under the blanket certificate issued in Docket No. CP88–686–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated March 30, 1989, under its Rate Schedule IT, it proposes to transport up to 5,000 MMBtu per day equivalent of natural gas for Westvaco. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to a delivery point in Warren County, Ohio, as shown in Exhibit "C" of the agreement.

Texas Gas advises that service under § 284.223(a) commenced June 6, 1989, as reported in Docket No. ST89–3930–000. Texas Gas further advises that it would transport 3,600 MMBtu on an average day and 1,825,000 MMBtu annually.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP89–1757–000]

July 14, 1989.

Take notice that on July 10, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1757–000 a request pursuant to § 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Enron Gas Marketing, Inc. (Enron Marketing) under the blanket certificate issued in Docket No. CP88–686–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Texas Gas requests authority to transport on a peak day up to 200,000 MMBtu of natural gas from various receipt points on Texas Gas' system located in Arkansas, Illinois, Indiana, Kentucky, Ohio, Tennessee, and both onshore and offshore Texas and Louisiana for redelivery to Enron Marketing in Louisiana. Further, Texas Gas states that the average daily and annual transportation quantities are estimated to be 90,000 MMBtu nd 32,850,000 MMBtu, respectively.

Texas Gas states that transportation service for Enron Marketing cc nmenced June 3, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported with the Commission in Docket No. ST89–3918.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. East Tennessee Natural Gas Company

[Docket No. CP89–1739–000]

July 14, 1989.

Take notice that on July 7, 1989, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939–0245, filed in Docket No. CP89–1739–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 1.06 miles of 8⅝-inch pipeline loop across the Cumberland River in Smith County, Tennessee and approximately 1.09 miles of 12¾-inch pipeline loop across the Hiwassee River in Bradley and McMinn Counties, Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed pipeline loops are to protect the integrity of the system and to permit it to maintain service in the event of failure of its existing single lines which were originally installed in 1950 and 1961. Applicant states that the proposed loops would not increase the throughput and would have a negligible impact on the capacity of Applicant's system.

Applicant estimates the cost of the proposed facilities to be $2,235,280. Applicant proposes to finance the project with funds on hand or from internally generated funds.

Comment date: August 4, 1989 in accordance with Standard Paragraph F at the end of the notice.

8. El Paso Natural Gas Company

[Docket No. CP89–1722–000]

July 14, 1989

Take notice that on June 29, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–1722–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon from interstate service by conveyance to Western Gas Processors, Ltd., (Western Gas) certain existing compression, pipeline and plant facilities, with appurtenances, hereinafter referred to as the "Midkiff System," being located in Glasscock, Midland, Reagan and Upton Counties, Texas, and the related service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the Midkiff System consists of the following certificated compression and processing facilities: (i) The Pembrook Field Compressor Station (Pembrook Station), with five field compressor units totaling 6,750 ISO horsepower; (ii) the Driver Field Compressor Station (Driver Sation), with three field compressor units totaling 6,000 ISO horsepower; (iii) the Midkiff Field Compressor Station (Midkiff Station), with thirteen field compressor units totaling 23,760 ISO horsepower; (iv) the Midkiff Dehydration Plant, with a design inlet capacity of 136,000 Mcf per day (Mcfd); (v) the Midkiff Gasoline Plant, with a design inlet capacity of 168,000 Mcfd; and (vi) general structures and equipment, meter stations, and field communication facilities necessary for the operation and maintenance of the above described facilities.

The Midkiff System also includes the following certificated pipelines: (i) The Upton County Line to Texas Natural Gas' (TNG) Pembrook Plant Line (Upton to TNG Pembrook Line), consisting of approximately 12.8 miles of 12¾" O.D. pipeline, and approximately 1.6 miles of 6⅝" O.D. pipeline, and necessary appurtenances; (ii) the Pembrook Plant to Midkiff Plant Line (Pembrook to Midkiff Line), consisting of approximately 0.1 mile of 24" O.D. pipeline and 12.7 miles of 16" O.D. pipeline, and necessary appurtenances; (iii) the Driver Plant to Midkiff Plant Line (Driver to Midkiff Line), consisting of approximately 6.3 miles of 26" O.D. pipeline, and necessary appurtenances; (iv) the TNG Pembrook Plant (now retired) to Midkiff Plant Line (TNG Pembrook to Midkiff Line), consisting of approximately 7.5 miles of 10¾" O.D. pipeline, and necessary appurtenances; and (v) the Sprayberry Gathering System, consisting of approximately 185 miles of certificated gathering and well-tie pipelines, ranging in size from 2⅜" O.D. to 30" O.D. El Paso states that the Sprayberry Gathering System also includes approximately 875 miles of various sized non-jurisdictional and non-certificated gathering lines and two portable field compressors which will also be conveyed to Western Gas.

El Paso states that the facilities and service were authorized as follows: By order issued June 23, 1952, in Docket No. G–1631, authorization was granted to, *inter alia*, construct the Upton to TNG Pembrook Line and by order issued June 29, 1953, as amended, authorization was granted in Docket No. G–2106 to, *inter alia*, construct and operate the Pembrook Station, the Driver Station, the Midkiff Station, the Midkiff Dehydration Plant, the Midkiff Gasoline Plant, the Pembrook to Midkiff Line, the Driver to Midkiff Line, the TNG Pembrook to Midkiff Line, and the Sprayberry Gathering System. El Paso states that the Midkiff System was designed to gather natural gas at the Driver and Pembrook Stations and then deliver that gas to the Midkiff Plant to be processed along with gas gathered in the proximity of the Midkiff Plant. After processing, the gas is ultimately delivered to El Paso's transmission facilities for transportation to its customers.

El Paso states that many of the producers with gas in the Midkiff System have chosen to abandon their sales to El Paso and now sell gas directly to others. Currently, approximately 45 percent of the total 41,000 Mcfd of residue gas available at the outlet of the Midkiff Plant is dedicated to El Paso's system supply in performance of its merchant role. El Paso states that the remaining 55

percent of such residue gas is transported by El Paso to various delivery points on its system. El Paso further states that it constructed the Midkiff System to gather and process gas for system supply. Due to the precipitous decline in gas sources historically serving the Midkiff System, the unit cost for gathering and processing system supply gas through the Midkiff System has increased dramatically. El Paso states that, for example, the unit cost for gathering and processing the Midkiff production was 19c per dekatherm (dt) in 1985. In contrast, it is stated that the unit cost for the twelve months ended December 1988 was 71c per dt, an increase over just three years of approximately 73 percent. Even though El Paso's purchases for system supply from the Midkiff area as a percentage of total Midkiff availability have substantially declined, El Paso states that the entire cost of the Midkiff System remains in El Paso's cost-of-service.

El Paso states that its market environment no longer justifies its continued retention of the Midkiff System. Moreover, due to the present and projected low demand for El Paso's system supply gas, El Paso no longer requires the assured access to gas supply provided by the Midkiff System. El Paso states that considering these conditions, it believes the continued operation of the Midkiff System by El Paso would frustrate its goal of optimizing system operations. Accordingly, El Paso and Western Gas have entered into an "Agreement of Sale Concerning the Midkiff Plant and Sprayberry Gathering System" dated May 12, 1989, for the sale of the Midkiff System. El Paso proposes to abandon the Midkiff System by conveyance to Western Gas. El Paso reports that Western Gas intends to operate the Midkiff System as an integrated, non-jurisdictional gathering and processing system and will file a petition of declaratory order requesting that the Commission disclaim jurisdiction over the Midkiff System as described herein.[1]

El Paso states that after abandonment of the Midkiff System, it will have purchase obligations for approximately 28,000 Mcfd of natural gas located in the Sprayberry Field. El Paso states that the sale of the Midkiff System will not prevent it from honoring its remaining contractual obligations in the Midkiff System. El Paso reports that Western Gas has agreed to provide gathering and processing services for El Paso's remaining gas in the Midkiff System. It is further stated that Western Gas has also indicated to El Paso that it will provide gathering and processing services for all producers with supplies located in the Midkiff System.

El Paso states that it will abandon no gas supply as a direct result of the abandonment of the Midkiff System. Furthermore, El Paso states that its ability to render existing natural gas service to its customers will not be impaired. According to El Paso, the abandonment will require no changes in it's FERC Gas Tariff and no significant change in it's rates will result therefrom. El Paso further states that in the future, its customers will benefit from a small reduction in sales and its transportation rates associated with the abandonment of these facilities.

El Paso states that there will be no adverse environmental effects upon effectuation of the proposed abandonment. Accordingly, El Paso states that it believes the proposed action does not constitute a major federal action significantly effecting the quality of the human environment and thus not subject to the requirements of the National Environmental Policy Act of 1969. In El Paso's judgement, an environmental analysis for the instant proposal is not necessary.

Comment date: August 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Gas Transport, Inc.

[Docket No. CP89-1746-000

July 14, 1989.

Take notice that on July 7, 1989, Gas Transport, Inc. (Gas Transport), 109 North Broad Street, Lancaster, Ohio 43132, filed a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for the account of Manville Sales Corporation (Manville) under the blanket authorization issued in Docket No. CP86-291-000, pursuant to Section 7 of the Natural Gas Act.

Take notice that Gas Transport also requests authorization to operate a new sales tap for the delivery of gas to Manville under the blanket authorization issued in Docket No. CP83-164-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Transport states that it proposes to transport natural gas for the account of Manville from existing connections with Columbia Gas Transmission Corporation to a delivery point at an existing interconnection with Hope Gas, Inc., near Mineral Springs in Wood County, West Virginia, who will make final delivery of the gas to Manville. Gas Transport further states that the maximum daily and annual quantities would be 4,500 MMBtu and 1,642,500 MMBtu, respectively, and that the average daily quantity would be 4,000 MMBtu. Service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89-4072-000 (filed June 30, 1989).

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. El Paso Natural Gas Company

[Docket No. CP89-1737-000]

July 14, 1989.

Take notice that on July 6, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1737-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Meridian Oil Hydrocarbons Inc. (Meridian Oil), under El Paso's blanket certificate issued in Docket No. CP88-433-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 21,100 MMBtu of natural gas per day for Meridian Oil from any point of receipt on El Paso's system to a delivery point located in Ector County, Texas. El Paso anticipates transporting 10,550 MMBtu of natural gas on an average day and an annual volume of 3,850,750 MMBtu.

El Paso states that the transportation of natural gas for Meridian Oil commenced May 8, 1989, as reported in Docket No. ST89-3622-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88-433-000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1744-000]

July 14, 1989.

Take notice that on July 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1744-000 a request pursuant to §§ 157.205 and 284.223 of the

[1] On June 29, 1989, in Docket No. CP89-1718-000, Western Gas filed a petition for declaratory order requesting that the Commission disclaim jurisdiction over the Midkiff System.

Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Pacific Resources Company (Pacific Resources) under Transco's blanket certificate issued in Docket No. CP88–328–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport up to 790,000 dt per day on an interruptible basis for Pacific Resources pursuant to a transportation agreement, under Rate Schedule IT, dated May 28, 1989, between Transco and Pacific Resources. Transco would receive gas from various existing points of receipt in onshore and offshore Louisiana and offshore Texas. Transco would deliver the gas at various existing delivery points in onshore Louisiana and onshore Texas.

Transco further states that the average day and annual transportation volumes would be 50,000 dt and 18,250,000 dt, respectively.

Transco also states it would construct no new facilities in order to provide this transportation service. Transco would utilize existing facilities as reflected in Exhibit A of the transportation agreement, it is stated.

Service under § 284.233(a) commenced on May 10, 1989 as reported in Docket No. ST89–4001–000, Transco advises.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP89–1745–000]

July 14, 1989.

Take notice that on July 7, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1745–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Tenngasco Corporation (Tenngasco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 432,600 MMBtu equivalent of natural gas on a peak day, 432,600 MMBtu equivalent on an average day, and 157,899,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Tenngasco's account at designated points on United's system in Panola County, Texas, and would deliver equivalent volumes at the tailgate of the Champlin East Texas Plant in Panola County, Texas. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced June 1, 1989, as reported in Docket No. ST89–3955.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89–1760–000]

July 14, 1989.

Take notice that on July 10, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky, 42301 filed in Docket No. CP89–1760–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (Enron Marketing), under its blanket authorization issued in Docket No. CP88–686–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for Enron Marketing, pursuant to a gas transportation agreement dated March 10, 1989 (reference no. 3264). The term of the transportation agreement is from the date of execution by Enron Marketing and shall continue in effect month-to-month thereafter, unless terminated upon 30 days written notice by either party. Texas Gas proposes to transport on a peak day up to 75,000 MMBtu; on an average day up to 25,000 MMBtu; and on an annual basis 9,125,000 MMBtu for Enron Marketing. Texas Gas proposes to receive the subject gas from exiting points of receipt in Acadia Parish and Lafourche Parish, Louisiana for transportation to existing points of delivery on its system. The proposed rate to be charged is contained in Texas Gas' currently effective IT rate schedule. It is further stated that the proposed transportation is being rendered through the use of Texas Gas' existing facilities.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on June 1, 1989, as reported in Docket No. ST89–3915–000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Southern Natural Gas Company

[Docket No. CP89–1756–000]

July 14, 1989.

Take notice that on July 10, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 3502–2563 filed in Docket No. CP89–1756–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Chemical Products Corporation (Chemical Products), an end-user under its blanket authorization issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed interruptible transportation service for Chemical Products, pursuant to an interruptible transportation service agreement dated April 17, 1989. The transportation agreement is effective for a primary term of one month and for successive terms of one month thereafter subject to termination by either party giving five days written notice. Southern proposes to transport 3,000 MMBtu of natural gas on a peak day; 1,850 MMBtu on an average day; and on an annual basis 675,250 MMBtu of natural gas for Chemical Products. Southern proposes to receive the subject gas at various receipt points located in Alabama, Louisiana, offshore Louisiana, Mississippi, Texas and offshore Texas for delivery to delivery points in Fulton County, Georgia. Southern avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Southern commenced such self-implementing service on May 10, 1989, as reported in Docket No. ST89–37333–000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Equitrans, Inc.

[Docket No. CP89–1699–000]

July 14, 1989.

Take notice that on June 29, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh,

Pennsylvania 15205, filed in Docket No. CP89–1699–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Endevco Marketing Company (Endevco), under Equitrans' blanket certificate issued in Docket No. CP86–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to transport on an interruptible basis up to 4,900 Mcf of natural gas on a peak day, 4,900 Mcf on an average day and 1,788,500 Mcf on an annual basis for Endevco. Equitrans states that it would perform the transportation service for Endevco under Equitrans' Rate Schedule ITS. Equitrans indicates that it would transport the gas from a receipt point in Gilmer County, West Virginia, to four delivery points in Allegheny County, Pennsylvania.

It is explained that the service commenced November 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1289. Equitrans indicates that no new facilities would be necessary to provide the subject service.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. El Paso Natural Gas Company

[Docket No. CP89–1735–000]

July 14, 1989.

Take notice that on July 6, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–1735–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of V.H.C. Gas Systems, L. P. (VHC), under El Paso's blanket certificate issued in Docket No. CP88–433–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 520,000 MMBtu of natural gas per day for VHC from any receipt point located on El Paso's system to various delivery points located at the borderline between the States of Arizona and California. El Paso anticipates transporting, on an average day 520,000 MMBtu and an annual volume of 189,800,000 MMBtu.

El Paso states that the transportation of natural gas for VHC commenced May 16, 1989, as reported in Docket No. ST89–3885–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88–433–000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Equitrans, Inc.

[Docket No. CP89–1698–000]

July 14, 1989.

Take notice that on June 29, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1698–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for CNG Trading Company (CNG), under Equitrans' blanket certificate issued in Docket No. CP86–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to transport on an interruptible basis up to 49,000 Mcf of natural gas on a peak day, 49,000 Mcf on an average day and 17,885,000 Mcf on an annual basis for CNG. Equitrans states that it would perform the transportation service for CNG under Equitrans' Rate Schedule ITS. Equitrans indicates that it would transport the gas from receipt points in Pennsylvania and West Virginia, to four delivery points in Allegheny and Greene Counties, Pennsylvania.

It is explained that the service commenced October 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1290. Equitrans indicates that no new facilities would be necessary to provide the subject service.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Equitrans, Inc.

[Docket No. CP89–1784–000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1784–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Harmarville Rehabilitation Center (Harmarville), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated November 22, 1988, under its Rate Schedule ITS, it proposes to transport up to 196 Mcf per day of natural gas for Harmarville. Equitrans states that it would transport the gas from receipt points in Nicholas County, West Virginia, and Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of Harmarville at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89–1226. Equitrans further advises that it would transport 83 Mcf on an average day and 30,295 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Equitrans, Inc.

[Docket No. CP89–1785–000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1785–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Consolidated Fuel Corporation (Consolidated), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated November 1, 1988, under its Rate Schedule ITS, it proposes to transport up to 1,176 Mcf per day of natural gas for Consolidated. Equitrans states that it would transport the gas from receipt points in Braxton, Lewis, Gilmer, Tyler, Taylor, Ritchie and Upshur Counties, West Virginia, and Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of Consolidated at the

interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station and off the H–152 and H–153 lines, Allegheny County, Pennsylvania; interconnect between Columbia Gas of Pennsylvania/Equitrans' Groveton, Allegheny County, Pennsylvania; and interconnect between Consolidated Gas Transmission/Equitrans' Pratt Compression Station, Greene County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced December 1, 1988, as reported in Docket No. ST89–1293. Equitrans further advises that it would transport 1,176 Mcf on an average day and 429,240 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Equitrans, Inc.

[Docket No. CP89–1786–000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1786–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for West Penn Hospital (West Penn), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated January 18, 1989, under its Rate Schedule ITS, it proposes to transport up to 784 Mcf per day of natural gas for West Penn. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and Nicolas County, West Virginia, and would deliver the gas on behalf of West Penn at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 24, 1989, as reported in Docket No. ST89–2115. Equitrans further advises that it would transport 318 Mcf on an average day and 116,070 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Equitrans, Inc.

[Docket No. CP89–1787–000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1787–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for O & R Energy Development, Inc. (O & R), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 16, 1988, under its Rate Schedule ITS, it proposes to transport up to 4,900 Mcf per day of natural gas for O & R. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of O & R at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced December 6, 1988, as reported in Docket No. ST89–1735. Equitrans further advises that it would transport 2,695 Mcf on an average day and 983,675 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Equitrans, Inc.

[Docket No. CP89–1789–000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1789–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Access Energy Corporation (Access), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 1, 1988, under its Rate Schedule ITS, it proposes to transport up to 3,038 Mcf per day of natural gas for Access. Equitrans states that it would transport the gas from receipt points in Lewis, Gilmer, Tyler, Upshur, Wetzel Counties, West Virginia, and Greene County, Pennsylvania, and would deliver the gas on behalf of Access at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station and off the H–152 and H–153 lines, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced December 1, 1988, as reported in Docket No. ST89–1732. Equitrans further advises that it would transport 1,553 Mcf on an average day and 566,845 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Equitrans, Inc.

[Docket No. CP89–1795–000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1795–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for McKeesport Hospital (McKeesport), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated November 8, 1988, under its Rate Schedule ITS, it proposes to transport up to 511 Mcf per day of natural gas for McKeesport. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of McKeesport at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station and off the H–152 lines, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89–1292. Equitrans further advises that it would transport 266 Mcf on an average day and 97,090 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Trunkline Gas Company

[Docket No. CP89–1776–000]

July 18, 1989.

Take notice that on June 11, 1989, Trunkline Gas Company (Trunkline), P. O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–1776–000 a request pursuant to §§ 157.205 and 284.223 of the Commission Regulations under the Natural Gas Act for authorization to transport natural gas for Conoco, Inc. (Conoco), a shipper and marketer of natural gas and agent for Power Silicates, under Trunkline's blanket certificate issued in Docket No. CP86–586–00 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Trunkline requests authority to transport up to 500 Dt. per day on an interruptible basis on behalf of Conoco pursuant to a Transportation Agreement dated September 26, 1988, between Trunkline and Conoco (Transportation Agreement). The Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline will various existing points of receipt on its system. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Panhandle Eastern Pipe Line Company in Douglas County, Illinois.

The Applicant further states that the estimated daily and estimated annual quantities would be 300 Dt. and 109.500 Dt., respectively. Service under § 284.223(a) commenced on June 4, 1989, as reported in Docket No. ST89–3976.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Trunkline Gas Company

[Docket No. CP89–1777–000

July 18, 1989.

Take notice that on July 11, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1775–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of GasTrak Corporation (GasTrak), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport for GasTrak, on an interruptible basis, up to 5,000 dt equivalent of natural gas on a peak day, 5,000 dt equivalent on an average day, and 1,825,000 dt equivalent on an annual basis. It is stated that Trunkline would receive the gas for GasTrak's account at various designated points on Trunkline's system in Illinois, Louisiana, Tennessee and Texas, and would deliver equivalent volumes of gas, less fuel and unaccounted for line loss, to Alpha Chemical Sales in Fayette County, Tennessee. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced June 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3980.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Tennessee Gas Pipeline Company

[Docket No. CP89–1783–000]

July 18, 1989.

Take notice that on July 12, 1989, Tennessee Gas Pipeline Company (Tennessee) Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1783–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for auithorization to transport natural gas on behalf of Graham Energy Marketing Corp. (Graham), a natural gas marketer, under its blanket authorization issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Graham, pursuant to an interruptible transportation service agreement dated May 19, 1989, as amended May 23 and June 22, 1989. The transportation agreement is effective for a term of one year and month-to-month thereafter, provided that either party may terminate the agreement at any time upon at least 30 days written notice to the other party. Tennessee proposes to transport 80,000 dekatherms (dt) of natural gas on a peak and averge day; and on an annual basis 29,200,000 dt of natural gas for Graham. Tennessee proposes to receive the subject gas at various existing points of receipt located offshore Louisiana and offshore Texas and in the states of Louisiana and Texas. The points of delivery are multiple points off Tennessee's system located in various States. Tennessee avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on June 1, 1989, as reported in Docket No. ST 89–3996–000.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. Panhandle Eastern Pipe Line Co.

[Docket No. CP89–1773–000]

July 18, 1989.

Take notice that on July 11, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–1773–000 a request pursuant to § 157.205 the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Consumers Gas Marketing, Inc. (Consumers), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Panhandle requests authority to transport on an interruptible basis up to 7,500 dt equivalent on an average day, 8,000 dt equivalent on a peak day, and 2,737,500 dt equivalent on an annual basis on behalf of Consumers pursuant to a Transportation Agreement dated July 28, 1988 between Panhandle and Consumers (Transportation Agreement). It is further stated that the Transportation Agreement provides for Panhandle to receive gas from various existing points of receipt on its system, and that it will then transport and redeliver subject gas to Cips—Quincy County, Illinois. It is stated that service under § 284.223(a) commenced on June 3, 1989, as reported in Docket No. ST89–3987.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1774–000]

July 18, 1989.

Take notice that on July 11, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1774–000 a request pursuant to § 157.205 of the Commission's

Regulations for authorization to provide transportation service on behalf of Chrysler Motors Corporation (Chrysler), under Panhandle's blanket certificate issued in Docket No. CP86–585–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on a firm basis, up to a maximum of 5,000 dekatherms of natural gas per day for Chrysler from receipt points located in Kansas, Colorado, Illinois, Michigan, Ohio, Oklahoma and Texas to a delivery point located in Wayne County, Michigan. Panhandle anticipates transporting an annual volume of 1,825,000 dekatherms.

Panhandle states that the transportation of natural gas for Chrysler commenced June 1, 1989, as reported in Docket No. ST89–3888–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Panhandle in Docket No. CP86–585–000.

Commend date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. Trunkline Gas Company

[Docket No. CP89–1775–000]

July 18, 1989.

Take notice that on July 11, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1775–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Semco Energy Services, Inc. (Semco), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport for Semco, on an interruptible basis, up to 50,000 dt equivalent of natural gas on a peak day, 50,000 dt equivalent on an average day, and 18,250,000 dt equivalent on an annual basis. It is stated that Trunkline would receive the gas for Semco's account at various designated points on Trunkline's system in Illinois, Louisiana, Tennessee and Texas, and would deliver equivalent volumes of gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced June 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3979.

Commend date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. Texas Gas Transmission Corporation

[Docket No. CP89–1770–000]

July 19, 1989.

Take notice that on July 11, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1770–000 a request pursuant to § 157.205 of the Commisison's Regulations for authorization to provide transportation service on behalf of Texaco Gas Marketing, Inc. (Texaco) under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day for Texaco from receipt points located in offshore, Louisiana to a delivery point located in offshore, Louisiana. Texas Gas anticipates transporting, on an average day 5,000 MMBtu and an annual volume of 1,825,000 MMBtu.

Texas Gas states that the transportation of natural gas for Texaco commenced June 8, 1989, as reported in ST89–3931–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88–686–000.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

Panhandle Eastern Pipe Line Company

[Docket No. CP89–1772–000]

July 18, 1989.

Take notice that on July 11, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1772–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Hadson Gas Systems, Inc. (Hadson), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 50,000 dt per day on an interruptible basis, pursuant to a transportation agreement dated May 19, 1989, between Panhandle and Hadson. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt of its system in the states of Colorado, Kansas, Oklahoma, and Texas. Panhandle states that it would then redeliver subject gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas. Panhandle indicates that the total volume of gas to be transported for Hadson on a peak day would be 50,000 dt; on an average day would be 40,000 dt; and on an annual basis would be 14,600,000 dt. It is further stated that the average day and annual volumes are based upon Hadson's estimates, and the actual volumes are dependent upon Hadson's requirements.

Panhandle states that it commenced the transportation of natural gas for Hadson on June 1, 1989, at Docket No. ST89–3969–000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. Columbia Gulf Transmission Company

[Docket No. CP89–1769–000]

July 18, 1989.

Take notice that on July 11, 1989, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP89–1769–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86–239–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to transport natural gas on an interruptible and a firm basis for Exxon Corporation (Exxon). Columbia Gulf explains that service commenced June 1, 1989 under § 284.223(a) of the Commission's

Regulations, as reported in Docket No. ST89–3922–000. Columbia Gulf explains that it would transport for Exxon 8,000 MMBtu of natural gas per day on a firm basis for the period June 1, 1989, through October 31, 1989. Columbia Gulf states that the total quantity of gas to be transported on a firm basis during this period is 1,200,000 MMBtu. Columbia Gulf states that it would also transport natural gas on an interruptible basis for Exxon. Columbia Gulf explains that the peak day quantity would be 15,000 MMBtu, the average daily quantity would be 7,000 MMBtu, and that the annual quantity would be 2,555,000 MMBtu. Columbia Gulf states that it would receive natural gas from Trunkline Pipeline Company in St. Mary Parish, Louisiana, and would redeliver to Transcontinental Gas Pipeline Company in Terrobonne Parish, Louisiana.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. United Gas Pipe Line Company

[Docket No. CP89–1766–000]

July 18, 1989.

Take notice that on July 11, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1766–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Kogas, Inc. (Kogas), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 185,400 MMBtu of natural gas equivalent per day for Kogas pursuant to a transportation agreement dated January 18, 1989, between United and Kogas. United would receive natural gas at two existing receipt points in Texas and redeliver equivalent volumes of gas, less fuel and company used gas, at an existing point in Louisiana.

United further states that the estimated average daily and annual quantities would be 185,400 MMBtu and 67,671,000 MMBtu respectively. Service under § 284.223(a) commenced June 9, 1989, as reported in Docket No. ST89–3973–000, it is stated

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

34. United Gas Pipe Line Company

[Docket No. CP89–1764–000]

July 18, 1989

Take notice that on July 11, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1764–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of LaSER Marketing Company (LaSER), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 618,000 MMBtu equivalent of natural gas on a peak day, 618,000 MMBtu equivalent on an average day, and 225,570,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for LaSER's account at designated points on United's system in Louisiana and Texas, and would deliver equivalent volumes at designated points on United's system in Louisiana, Texas, Mississippi, Alabama and Florida. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced May 25, 1989, as reported in Docket No. ST89–3971.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

35. Natural Gas Pipeline Company of America

[Docket No. CP89–1751–000]

July 18, 1989.

Take notice that on July 10, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1751–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Natural Gas Clearinghouse, Inc. (NGCH) under the blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request on file with Commission and open to public inspection.

Natural states that pursuant to a Transportation Agreement dated July 13, 1988, it proposes to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for NGCH. The receipt points are located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Illinois, Oklahoma, New Mexico, Kansas, Town, Arkansas and Nebraska and the delivery points are located in Louisiana, Offshore Louisiana and Texas.

Natural also states that it will transport approximately 10,000 MMBtu on an average day and approximately 3,650,000 on an annual basis.

Natural further states it commenced service on May 5, 1989, as reported in Docket No. ST89–4122–000.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

36. Texas Eastern Transmission Corporation

[Docket No. CP89–1749–000]

July 18, 1989

Take notice that on July 7, 1989, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP89–1749–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Catamount Natural Gas, Inc. (Catamount), a marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP88–67–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern states that pursuant to a transportation agreement dated April 17, 1989, under its Rate Schedule IT–1, it would transport up to 50,000 MMBtu per day on behalf of Catamount. Texas Eastern further states that it would receive the natural gas from various existing receipt points on its system in offshore Texas and Louisiana and would transport and redeliver the natural gas, less applicable shrinkage, to various existing delivery points on its system in offshore Texas and Louisiana. Texas Eastern indicates that the estimated average daily and estimated annual quantities to be transported would be 50,000 MMbtu and 18,250,000 MMbtu, respectively.

Texas Eastern states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on May 27, 1989, as reported in Docket No. ST89–3802.000.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

37. Equitrans, Inc.

[Docket No. CP89–1788–000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1788–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for O & R Energy Development, Inc. O & R), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated January 23, 1989, under its Rate Schedule ITS, it proposes to transport up to 9,800 Mcf per day of natural gas for O & R. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of O & R at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89–3513. Equitrans further advises that it would transport 4,996 Mcf on an average day and 1,823,540 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

38. Equitrans, Inc.

[Docket No. CP89–1790–000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1790–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for St. Francis Hospital (St. Francis), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 16, 1988, under its Rate Schedule ITS, it proposes to transport up to 1,568 Mcf per day of natural gas for St. Francis. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of St. Francis at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89–1730. Equitrans further advises that it would transport 658 Mcf on an average day and 240,170 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

39. Equitrans, Inc.

[Docket No. CP89–1791–000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1791–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Mallet & Company (Mallet), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 5, 1988, under its Rate Schedule ITS, it proposes to transport up to 127 Mcf per day of natural gas for Mallet. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of Mallet at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89–1731. Equitrans further advises that it would transport 52 Mcf on an average day and 18,980 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

40. Equitrans, Inc.

[Docket No. CP89–1792–000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1792–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for O & R Energy Development, Inc. (O & R), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 16, 1988, under its Rate Schedule ITS, it proposes to transport up to 343 Mcf per day of natural gas for O & R. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of O & R at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89–1729. Equitrans further advises that it would transport 343 Mcf on an average day and 125,195 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

41. Equitrans, Inc.

[Docket No. CP89–1794–000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1794–000 a request pursuant to § 157.205 of the Commission's

Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Quality Rolls, Inc. (Quality), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 21, 1988, under its Rate Schedule ITS, it proposes to transport up to 98 Mcf per day of natural gas for Quality. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of Quality at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89–1808. Equitrans further advises that it would transport 46 Mcf on an average day and 16,790 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

42. Equitrans, Inc.

[Docket No. CP89–1796–000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1796–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Hospital Linen Service Facility (Hospital Linen), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated November 23, 1988, under its Rate Schedule ITS, it proposes to transport up to 147 Mcf per day of natural gas for Hospital Linen. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene and Allegheny Counties, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of Hospital Linen at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced December 2, 1988, as reported in Docket No. ST89–1225. Equitrans further advises that it would transport 87 Mcf on an average day and 31,755 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

43. Equitrans, Inc.

[Docket No. CP89–1797–000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1797–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for General Electric Company (General Electric), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated October 19, 1988, under its Rate Schedule ITS, it proposes to transport up to 4,900 Mcf per day of natural gas for General Electric. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of General Electric at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89–1294. Equitrans further advises that it would transport 1,080 Mcf on an average day and 394,200 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

44. Equitrans, Inc.

[Docket No. CP89–1798–000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–1798–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Vincentian Home, Inc. (Vincentian Home), under the blanket certificate issued in Docket No. CP86–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated January 18, 1988, under its Rate Schedule ITS, it proposes to transport up to 196 Mcf per day of natural gas for Vincentian Home. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene and Allegheny Counties, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of Vincentian Home the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H–152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 24, 1988, as reported in Docket No. ST89–2114. Equitrans further advises that it would transport 64 Mcf on an average day and 23,360 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17313 Filed 7-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM89-14-000]

Natural Gas Policy Act of 1978; Application for Approval of Alternative Filing Requirements by the State of Michigan's Department of Natural Resources

Issued: July 19, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of receipt of application for approval of alternative filing requirements.

SUMMARY: Pursuant to § 274.207 of the Commission's regulations (18 CFR 274.207), the Department of Natural Resources of the State of Michigan filed an application for approval of alternative filing requirements for well determination applications filed under NGPA action 107(c)(4) of the Natural Gas Policy Act of 1978. The Commission hereby issues notice of Michigan's application.

DATES: Comments on Michigan's application are due on or before August 17, 1989.

Requests for public hearing are due no later than August 17, 1989.

ADDRESS: Comments and requests for hearing must be filed with: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION: Richard White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8696.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Receipt of Application for Approval of Alternative Filing Requirements

On May 15, 1989, the Department of Natural Resources of the State of Michigan (Michigan) filed an application for approval of alternative filing requirements pursuant to § 274.207 of the Commission's regulations for certain natural gas produced from Devonian shale.

Michigan requests alternative filing requirements for §§ 274.205(d)(3)(i) and 274.205(d)(4)(i) of the Commission's regulations as they are applied to persons seeking NGPA section 107(c)(4) determinations for wells completed on or after November 1, 1979, producing natural gas from the Antrim Shale formation (a Devonian age formation) in the State of Michigan.

Section 274.205(d)(3)(i) of the Commission's regulations applies to wells completed on or after November 1, 1979 and requires persons seeking a well determination that natural gas is produced from Devonian shale to submit a gamma ray log for the well. Michigan proposes that persons filing an application for a well determination for a well producing from the Antrim shale formation in Michigan completed on or after November 1, 1979, be required to submit a gamma ray log for the subject well, if available, or either a gamma ray log from the closest available well bore, producing or dry hole, within a one-mile radius of the well for which a determination is sought, or a mud log from the well for which the determination is sought if a gamma ray log for the determination well is not available.

Section 274.205(d)(4) of the Commission's regulations requires persons seeking a well determination for a well completed on or after November 1, 1979, to submit a sworn statement calculating the percentage of footage of the producing interval that is not Devonian shale as indicated by the gamma ray log. Because of the requested change to § 274.205(d)(3)(i), Michigan also proposes that persons seeking such a well determination for a well producing from the Antrim shale formation in Michigan submit a sworn statement calculating the percentage of footage of the producing interval that is not Devonian shale as indicated either by a gamma ray log for the subject well, or the mud log for the well under determination or the gamma ray log for a well within a one-mile radius of the well for which a determination is sought.

Michigan argues that the alternative filing requirements are needed because many of the wells currently producing gas from the Antrim shale formation in Michigan were completed on or after November 1, 1979 and gamma ray logs were not run. According to Michigan, producers would have to pull the tubing from their wells in order to run gamma ray logs. Michigan states further that there is a possibility that the wells would be permanently damaged and that the Michigan producers would lose future production. Additionally, Michigan states that if each producer is required to seek an adjustment pursuant to § 271.1106 of the Commission's regulations it would increase the Commission's administrative burden to process these petitions. Finally,

Michigan states that the Antrim shale formation in Michigan is fairly uniform and potentially disqualifying sand stringers of any consequence are rarely encountered in the Antrim shale formation. Because of the uniform lithology, the gamma ray signature of the formation is also uniformly consistent throughout Michigan Basin. Therefore Michigan argues that the requirement to submit a gamma ray log from a well located within a one-mile radius of the well for which a determination is being sought or a detailed sample description for those wells for which a gamma ray log is not available will be sufficient evidence that the well is producing from the Antrim shale formation.

Interested persons are invited to submit written comments on Michigan's application. Comments should be filed with the Office of the Secretary, Federal Energy Regulation Commission, 825 N. Capitol Street, NE., Washington, DC 20426 on or before August 17, 1989. An original and fourteen copies should be filed. Written comments will be available for inspection at the Commission's Public Reference Room during business hours.

Anyone wishing to present testimony, views, data or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. The request must specify the amount of time requested at the hearing. Requests for a public hearing should be filed with the Office of the Secretary on or before August 17, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17311 Filed 7-24-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-16-LNG]

Distrigas Corp.; Order Granting Authorization to Import Liquefied Natural Gas From Algeria

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting authorization to import liquefied natural gas from Algeria.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Distrigas Corporation authorization to import 48 cargoes of liquefied natural gas (LNG) from Algeria. The order, issued in FE Docket No. 89-16-LNG, authorizes the importation of a total 144 million MMBtu's or approximately 140 Bcf of LNG. The LNG would be purchased from Sonatrading Amsterdam B.V., a wholly owned subsidiary of Sonatrach, the Algerian national energy corporation, and sold to Distrigas' affiliate, Distrigas of Massachusetts (DOMAC), at DOMAC's existing LNG terminalling facilities in Everett, Massachusetts.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 14, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89-17377 Filed 7-24-89; 8:45 am]

BILLING CODE 6450-01-M

[FPC Docket IT-5462 and ERA Docket PP-7]

Intent to Rescind Export Authorization and Presidential Permit Issued to New York State Electric & Gas Corp.

AGENCY: Department of Energy.

ACTION: Revocation of export authorization IT 5462 and presidential permit PP-7 at request of licensee.

SUMMARY: Pursuant to a formal request by New York State Electric & Gas Corporation (NYSEG), the Department of Energy (DOE) intends to rescind Export Authorization IT-5462 and Presidential Permit PP-7 issued to NYSEG. In a letter dated January 23, 1989, NYSEG notified the DOE that it no longer provides services to Canada that require a Presidential permit or export authorization. The previously authorized transmission lines crossing the U.S.-Canadian border were removed by NYSEG on or before November 6, 1987.

FOR FURTHER INFORMATION CONTACT:

Lise Courtney M. Howe, Office of General Counsel (GC-41), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2900.

William H. Freeman, Office of Fuels Programs (FE-52), Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5883.

SUPPLEMENTARY INFORMATION: In a letter dated January 23, 1989, NYSEG notified the DOE that the export authorization and the Presidential permit issued under FPC Docket IT-5462 and ERA Docket PP-7 respectively no longer were required. In addition, NYSEG stated that all interconnection facilities authorized under the Presidential permit had been removed on or before November 6, 1987.

An export authorization and a Presidential permit originally were issued to NYSEG on July 7, 1942, in Docket No. IT-5462 under section 202(e) of the Federal Power Act and Executive Order 10485. The electricity exported was delivered to individual residential customers in Canada via four transmission lines originating from four different points in the State of New York. The export authorization permitted NYSEG to export a total of 3.5 kilowatts over the four 60-cycle, single-phase, 115-volt facilities.

According to NYSEG, the facilities authorized under Presidential Permit PP-7 are no longer needed and all interconnection facilities crossing the international border, including all wires and meters, as authorized in the aforementioned Presidential permit, have been removed. In addition, NYSEG stated that it no longer provides service to any Canadian customers for which an export authorization is required.

DOE finds that the rescission of export authorization IT-5462 issued to NYSEG also is consistent with the public interest because NYSEG no longer provides electric service to Canadian customers. In addition, DOE finds that the rescission of Presidential Permit PP-7 is consistent with the public interest because said facilities are no longer required or used by NYSEG.

The DOE hereby gives notice of the intent to revoke the authorization to export electric energy, issued to NYSEG pursuant to section 202(e) of the Federal Power Act in Docket No. IT-5462 effective August 24, 1989 unless it receives any public comments objecting to the proposed revocation. In addition, DOE gives notice of the intent to revoke Presidential Permit PP-7 issued to NYSEG pursuant to Executive Order 10485, as amended by Executive Order 10238, effective August 24, 1989 unless it receives any public comments objecting to the proposed revocation.

Any person desiring to be heard or to comment on these proposed revocations should forward comments to the Office of Fuels Programs, Department of Energy, FE-52, 3H-087, 1000 Independence Ave., SW., Washington, DC 20585.

Any such comments should be received by DOE no later than August 24, 1989. Copies of the request for the revocations will be made available,

upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, Room 1E–090, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Recission of the aforementioned export authorization and Presidential permit will become effective at the close of the comment period.

Issued in Washington, DC on July 14, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–17378 Filed 7–24–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket PP–65]

Intent to Rescind a Presidential Permit Issued to Union Butterfield

AGENCY: Department of Energy.

ACTION: Revocation of presidential permit PP–65 at request of licensee.

SUMMARY: Pursuant to a formal request by Union Butterfield (UB), the Department of Energy (DOE) intends to rescind Presidential Permit PP–65 issued to UB. In a letter dated February 3, 1989, UB notified the DOE that it no longer utilizes the Canadian services that required a Presidential permit. The previously authorized transmission lines crossing the U.S.-Canadian border were removed by UB on or before January 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Lise Courtney M. Howe, Office of General Counsel (GC–41), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2900.

William H. Freeman, Office of Fuels Programs (FE–52), Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–5883

SUPPLEMENTARY INFORMATION: In a letter dated February 3, 1989, UB notified the DOE that its Presidential permit was no longer required. In addition, UB stated that all interconnection facilities authorized under Presidential Permit PP–65 had been removed as of January 1, 1980.

A Presidential permit originally was issued to the Union Twist Drill Company on August 10, 1962, in Docket No. E–7010 under Executive Order 10485. The company changed its name in 1978 to Union/Butterfield Division, Litton Industrial Products, Inc., and the permit was amended by DOE in Docket No. PP–65 authorizing the operation, maintenance and connection of a 24.6-kV transmission line at Derby Line, Vermont.

UB has confirmed that the facilities authorized under Presidential Permit PP–65 are no longer needed, and that all interconnection facilities crossing the international border, including all wires and meters, as authorized in the aforementioned Presidential permit, have been removed.

DOE finds that the rescission of Presidential Permit PP–65 is consistent with the public interest because said facilities are no longer required or used by UB.

The DOE hereby gives notice of the intent to revoke Presidential Permit PP–65 issued to UB pursuant to Executive Order 10485, as amended by Executive Order 10236, effective August 24, 1989, unless it receives any public comments objecting to the proposed revocation.

Any person desiring to be heard or to comment on the proposed revocation should forward comments to the Office of Fuels Programs, Department of Energy, FE–52, 3H–087, 1000 Independence Ave., SW., Washington, DC 20585.

Any such comments should be received by DOE no later than August 24, 1989. Copies of the request for the revocation will be made available upon request for public inspection and copying at the DOE's Freedom of Information Room, Room 1E–090, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Rescission of the aforementioned Presidential permit shall become effective at the close of the comment period.

Issued in Washington, DC on July 14, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy

[FR Doc. 89–17379 Filed 7–24–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued the Week of April 24 Through April 28, 1989

During the week of April 24 through April 28, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 12, 1989.

Motion for Discovery

Concord Petroleum Corporation, Paul C. Elliott, 04/28/89, KRD–0420, KRH–0420

The Office of Hearing and Appeals (OHA) issued a Decision and Order concerning a Motion for Discovery and a Motion for Evidentiary Hearing filed in connection with a Statement of Objections to a Proposed Remedial Order (PRO) issued to Concord Petroleum Corporation and Paul C. Elliott (collectively, Concord). The OHA denied Concord's Motion for Discovery, which sought information concerning rulemakings and regulations related to 10 CFR 212.186 (the Layering Rule) and 210.62(c) (the Normal Business Practices Rule) and the Department of Energy's contemporaneous construction regarding these regulations. The firm's request for information pertaining to the ERA's audit of Concord was also denied. The OHA granted Concord's Motion for Evidentiary Hearing, finding that it would be beneficial to convene such a hearing to explore Concord's assertion that it provided traditional and historical reseller services in these transactions covered by the PRO.

Supplemental order

Getty Oil Company, 04/24/89, KFX–0065

The DOE issued a Supplemental Order distributing $148.73 in additional interest which accrued on crude oil overcharge funds remitted by Getty Oil Company while those funds were being held for the United States District Court for the District of Delaware. The DOE ordered these funds to be distributed in accordance with the directives set forth in *Getty Oil Co.*, 18 DOE ¶ 85,808 (1989).

Applications for Refund

Atlantic Richfield Company/O'Neals Arco Service Station, et al., 04/26/89, RF304–2543, et al.

The DOE issued a Decision and Order concerning thirty-seven Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the claimants were end-users or

reseller/retailers and were granted refunds based on the applicable presumptions of injury. The DOE concluded that the applicants should receive refunds totalling $116,680, representing $86,583 in principal and $25,097 in accrued interest.

Carl Johnson, et al., 04/27/89, RF272–2586, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 6 applicants based on their respective purchases or refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $26,583.

Carl's Texaco McCormick Lumber & Fuel, Inc., 04/27/89, RF272–4703, RF272–4709

The DOE issued a Decision and Order concerning the Applications for Refund of two claimants in the Subpart V crude oil overcharge refund proceeding. The DOE determined that the applicants resold the refined petroleum products that formed the basis of their applications. Since the applicants did not show that they absorbed the alleged overcharges, the DOE determined that both claims should be denied.

Central Nebraska Public Power and Irrigation District, 04/24/89, RF272–8090

Central Nebraska Public Power and Irrigation District (Central) filed an Application for Refund from the Subpart V crude oil overcharge monies. The DOE rejected arguments that Central was ineligible for a refund and determined that, as a producer of electricity sold to a public utility and as a provider of irrigation, Central was an end-user of petroleum products in a business unrelated to the petroleum industry. The DOE decided that the firm should be granted a refund conditioned upon its passthrough of the refund to the utility and to its irrigation customers. Accordingly, DOE approved a refund of $53,298, based upon the volume of Central's purchases of petroleum products.

Crown Central Petroleum Corporation/ D.M. Price and Sons, Inc., et al., 04/24/89, RF313–62, et al.

The DOE issued a Decision and Order granting applications filed by five purchasers of refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was granted a refund based on the volume of products it purchased from Crown and on the applicable presumption of injury. The total amount of refunds approved in this Decision was $40,713, representing $34,886 in principal plus $5,827 in accrued interest.

Dorchester Gas Corp./Tigrett Butane Co. Enron Liquid Marketing Co., 04/25/89, RF253–30, RF253–60

The DOE issued a Decision and Order concerning two Applications for Refund in the Dorchester Gas Corporation refund proceeding, filed by Tigrett Butane Company and Enron Liquid Marketing Company. Both Tigrett and Enron were identified purchasers of Dorchester petroleum products and limited their claims to the $5,000 small claims amount. The total refund approved, including both principal and interest, was $14,678.

Exxon Corporation/AJ's Exxon, et al., 04/28/89, RF307–2733, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was a retailer of Exxon products whose allocable share is less than $5,000. The four applicants submitted gallonage figures, which they requested that the OHA accept in lieu of Exxon's figures. The applicants' figures were accepted when they were taken from actual Exxon invoices or from reasonable estimates along with an explanation of the estimation methodology utilized. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $2,360 ($1,997 in principal plus $363 in interest).

Gulf Oil Corporation/Armstrong World Industries, et al., 04/28/89, RF300–3505, et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $65,344.

Gulf Oil Corporation/Berks Associates, et al., 04/28/89, RF300–3902, et al.

The DOE issued a Decision and Order concerning 20 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $50,608.

Gulf Oil Corporation/C.R. Quesenberry, Inc., 04/27/89, RF300–5216

The DOE issued a Decision and Order concerning an Application for Refund submitted by C.R. Quesenberry, Inc. (Quesenberry) in the Gulf Oil Corporation special refund proceeding. Quesenberry was both a reseller and a consignee of Gulf refined petroleum products during the Consent Order period. Quesenberry was granted a refund utilizing the $5,000 small claims injury presumption. The total refund granted, including interest, was $6,563.

Gulf Oil Corporation/Carl Superette, et al., 04/28/89, RF300–3901, et al.

The DOE issued a Decision and Order concerning 68 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $136,147.

Gulf Oil Corporation/Fosters Gulf Service, et al., 04/27/89, RF300–21, et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $12,915.

Gulf Oil Corporation/H & D Gulf, et al., 04/27/89, RF300–152, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $119,216.

Gulf Oil Corporation/Handy Food Store, et al., 04/28/89, RF300–832, et al.

The DOE issued a Decision and Order concerning 67 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $96,925.

Gulf Oil Corporation/Irby Oil Company, et al., 04/25/89, RF300–6422, et al.

The DOE issued a Decision and Order concerning 5 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The DOE determined that because two of the applicants were affiliated, they would be considered as one entity for purposes of the small claims injury presumption. Accordingly, the $5,000 principal refund was divided between the related firms on a pro-rata basis. The other applications were also approved using a

presumption of injury. The sum of the refunds granted in this Decision is $61,701.

Gulf Oil Corporation/Jack Ramey DBA Gulf Wholesale, 04/27/89, RF300–279

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Jack Ramey DBA Gulf Wholesale, a reseller and consignee of covered Gulf products. Since the requested refund amount was less than $5,000, the claimant was not required to show injury. The total refund granted was $599, which included both principal and interest.

Gulf Oil Corporation/Jerry's Gulf Station, et al., 04/26/89, RF300–207, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted by indirect purchasers in the Gulf Oil Corporation special refund proceeding. The DOE found no evidence that the supplier of these applicants passed through any alleged overcharges. Accordingly, the applications were approved under the small claims presumption of injury used for direct purchasers. The sum of the refunds granted in this Decision is $17,792.

Gulf Oil Corporation/Panama Aviation, 04/27/89, RF300–4989

The DOE issued a Decision and Order concerning an Application for Refund submitted by Panama Aviation, an indirect purchaser of Gulf refined petroleum products. The DOE found no evidence that Panama's supplier passed through any alleged overcharges. Accordingly, the Panama application was approved using the small claims injury presumption. The refund granted was $1,077.

Gulf Oil Corporation/Peterson Petroleum, Inc., 04/27/89, RF300–10783

The DOE issued a Supplemental Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The DOE had previously granted a refund of $37,357 payable to Peterson Petroleum, Inc. Peterson's attorney requested that the name of the payee be changed. The Supplemental Order rescinded the refund until DOE is able to evaluate the request.

Iowa County Highway Commission, et al., 04/24/89, RF272–22377, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to eight applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim either by consulting actual records or by using a reasonable estimate of its purchases. Since each applicant was an end-user of the products upon which the application was based, it was presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision was $80,137.

Murphy Oil Corporation/Hewitt Tire & Service Center, et al., 04/24/89, RF309–704, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by six purchasers of refund petroleum products sold by Murphy Oil Corporation. Each applicant was found to be injured under the appropriate mid-level presumption of injury and therefore eligible for refund of $5,000 or 40% of its full allocable share, whichever was greater. The total refund approved in this Decision was $34,806, representing $30,000 in principal, plus $4,806 in accrued interest.

Murphy Oil Corporation/R.J. Shell & Son, et al., 04/27/89, RF309–900, et al.

The DOE issued a Decision and Order granting 55 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the applicants was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share without a demonstration of injury. The sum of the refunds granted in the Decision was $73,149, $63,049 in principal plus $10,100 in interest.

Nate Hartley Fuel Oil Company, et al., 04/25/89, RF272–67164, et al.

The DOE issued a Decision and Order denying six Applications for Refund filed in the Subpart V crude oil refund proceeding. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because the applicants did not demonstrate injury due to the crude oil overcharges, they were ineligible for a crude oil refund.

Regional Transportation Dist., et al., 04/25/89, RF272–333, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund in the OHA Subpart V crude oil refund proceedings filed by five municipal/regional transit authorities, one state department of transportation, and one city utility. The DOE rejected objections to the applications and found that as governmental authorities, the seven applicants were eligible for a Subpart V crude oil refund, and further that the end-user presumption of injury was applicable to these entities. The total refund granted in this Decision was $395,336.

Standard Oil Co. (Indiana)/Arkansas, 04/27/89, RQ251–511

The DOE issued a Decision and Order approving the second-stage refund application filed by the State of Arkansas in the Standard Oil Co. (Indiana) special refund proceeding. Arkansas requested permission to use $221,269 in second-stage refund monies to finance a program of energy audits for businesses in the State. The DOE found that this program would provide restitution to injured consumers of petroleum products. Accordingly, the DOE granted Arkansas' refund application, and allocated $221,269 in second-stage funds to the State.

State of Connecticut, et al., 04/25/89, RF272–4416, et al.

Five state agencies filed applications for refund in the Subpart V crude oil refund proceedings. A group of utilities, transporters and manufacturers filed objections to the agencies' applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The objectors also claimed that, as governmental entities, the applicants were ineligible for refunds from the twenty percent of the crude oil overcharge funds reserved to pay Subpart V claims. The DOE rejected both of these arguments. With respect to the latter objection, the DOE found that the Stripper Well Settlement Agreement does not prohibit a State, or a subdivision of a State, from filing a claim for direct restitution. With respect to the former argument, the DOE found that the objectors had not met the burden of going forward with evidence to rebut the end-user presumption of injury. Accordingly, the applications were approved and a total of $338,284 was granted to the applicants.

Tradewind Chevron, et al., 04/24/89, RF272–24820, et al.

The DOE issued a Decision and Order denying refunds to seven applicants in the Subpart V crude oil refund proceeding. All four applicants were retailers of petroleum products during the regulated period. Because none of the applicants demonstrated injury due to the crude oil overcharges, they were found ineligible for crude oil refunds. Accordingly, their Applications for Refund were denied.

Uniroyal, Inc., 04/25/89, RF272-11140, RD272-11140

Uniroyal, Inc., filed an Application for Refund in the Subpart V crude oil refund proceeding. A group of States filed an objection to Uniroyal's application, claiming that the firm should not receive a refund because it did not establish that it was an injured end-user. The States also filed a Motion for Discovery, seeking information that would support their assertion of non-injury. The DOE rejected the States' argument, finding that they had not submitted relevant material sufficient to overcome the presumption of injury available to end-user applicants in this proceeding. The DOE dismissed the Motion for Discovery on similar grounds. The DOE then reviewed the application and found that information provided therein supported the firm's claim. Accordingly, Uniroyal was granted a refund of $7,749.

Dismissals

The following submissions were dismissed:

Name	Case No.
Al Service Station et al (See Attached List).	RF304-3473
Blue Flame L.P. Gas Co., Inc	RF307-7801
Burnside Arco	RF304-4156
Chico Gulf Service Station	RF300-7921
Columbia Boulevard Arco	RF304-4114
Drugmand Arco	RF304-4010
Eastgate Exxon	RF307-7454
Eltaw Exxon Service Station	RF307-169
Four Star Service Stations, Inc	RF309-318
Hal's Arco	RF304-4117
Harrisburg Gulf Service, Inc	RF300-186
Highland Gulf, Inc	RF300-143
Hutcheson's Gulf	RF300-184
Jennes Arco	RF304-4155
Jim's Arco	RF304-4118
Knight Arco	RF304-4116
Lou's Gulf	RF300-8597
Main Street Arco	RF304-4124
O'Neil Tire & Supply	RF304-129
Powell Arco	RF304-4115
Radhe Krishan Jaggi	RF307-9382
Rogers Gulf	RF300-7991
Sandy's Arco	RF304-4141
Shreves Arco	RF304-3412
State of New York, Office of General Services.	RF300-8103
Stockwell's Gulf	RF300-8958
Summerville Exxon	RF307-9121
T&J Arco	RF304-2934
Theodore W. Sterling, Jr	RF307-8820
Tunnel Road Gulf	RF300-6621
10-10 Truck Stop	RF300-9896

APPENDIX

Case number	Applicant name
RF304-3473	Al Service Station
RF304-3542	Dicks Clark Service
RF304-3548	Cupertino ARCO Service Station
RF304-3641	ARCO TrucK Stop
RF304-3655	Montecito
RF304-3657	Ramada ARCO

APPENDIX—Continued

Case number	Applicant name
RF304-3670	Ingleside ARCO
RF304-3698	ARCO AM PM
RF304-3703	Ernie Val ARCO
RF304-3764	ARCO Truck Service, Inc.
RF304-3765	A C & T Distributor Co., Inc.
RF304-3825	Montecito ARCO
RF304-3830	Jackpot, Inc.
RF304-3851	Alpine ARCO
RF304-3853	DC ARCO
RF304-3873	A Street ARCO
RF304-3951	Lyne Vine ARCO
RF304-4121	Auckers ARCO
RF304-4130	Ahmads ARCO
RF304-4154	Baker and Brown ARCO
RF304-4341	ARCO Gas and Mini Mart
RF304-4352	Daniels Service Station
RF304-6396	Bells ARCO

[FR Doc. 89-17380 Filed 7-24-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3620-2]

Science Advisory Board; Request for Nomination of Members and Consultants

In accordance with its standard operating procedures (SAB-FRL-2657-4 dated August 21, 1984)), the Science Advisory Board (SAB) (including the Clean Air Scientific Advisory Committee (CASAC)) of the Environmental Protection Agency (EPA) is soliciting nominations for Members and Consultants (M/Cs). As part of this effort, the Agency is publishing this notice to describe the purpose of the SAB and to invite the public to nominate appropriately qualified candidates to fill upcoming vacancies. This process supplements other efforts to identify qualified candidates.

The SAB is composed of outside scientists and engineers who are employed on an intermittent basis to provide independent advice directly to the EPA Administrator on technical aspects of public health and environmental issues confronting the Agency. Members of the SAB are appointed by the Deputy Administrator to serve staggered terms of one to four years each. Consultants are appointed by the Staff Director to serve renewable one-year terms and serve on SAB committees, as needed. Many individuals serve as consultants prior to serving as members.

Any interested person or organization may nominate qualified persons to serve with the SAB. Nominees should be qualified by education, training and experience to evaluate scientific and/or engineering information on issues referred to the Board.

M/Cs most often serve in association with one of the following standing committees: Clean Air Scientific Advisory Committee, Environmental Engineering Committee, Environmental Effects, Transport & Fate Committee, Environmental Health Committee, Indoor Air Quality/Total Human Exposure Committee, Radiation Advisory Committee, Research Strategies Advisory Committee.

Specific areas of interest to the Board at this time include: Computer modelling of environmental processes drinking water issues, risk assessment, and science policy issues.

M/Cs can expect to attend 1-6 meetings per year, based upon the activity of the committee on which they serve. M/Cs generally serve as "Special Government Employees (SGEs)" (40 CFR Part 3, Subpart F or "EPA Ethics Advisory 88-6 dated 7/6/88) and receive compensation based upon their regular income, in addition to reimbursement at the Federal government rate for travel and per diem expenses while serving on the SAB. SGEs are required to complete an application package, including a Confidential Statement of Financial Interests.

A list of current M/Cs and the Annual Report of the Staff Director is available by calling (202) 382-4126.

Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should include a resume that addresses the nominee's background, experience, qualifications, and specific areas of expertise.

Information on the nominees will be entered into the SAB's data base for potential M/Cs. The data base will be consulted whenever vacancies arise and/or when special expertise is needed for particular reviews. This request for nominations does not imply any commitment by the Agency to select M/Cs from the responses received.

Nominations should be submitted to Ms. Cheryl B. Bentley, Program Analyst, Science Advisory Board (A-101F), U.S. EPA, 499 South Capitol Street SW., Washington, DC 20460, no later than October 2, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-17384 Filed 7-24-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0167.

Title: Claims of Federal Personnel for Personal Damage or Loss.

Abstract: The information collected is needed to comply with the Director's statutory authorization to settle and pay claims of FEMA personnel for personal property damage incident to service. The respondents are FEMA personnel desirous of making a claim and the information collected is used only to determine the appropriate disposition of the claim.

Type of Respondents: Federal agencies or employees.

Estimate of Total Annual Reporting and Recordkeeping Burden: 10.

Number of Respondents: 5.

Estimated Average Burden Hours per Response: 1.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: July 17, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89–17356 Filed 7–24–89; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–835–DR]

Major Disaster and Related Determinations; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–835–DR), dated July 18, 1989, and related determinations.

Dated: July 18, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE

Notice is hereby given that, in a letter dated July 18, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Tropical Storm Allison beginning on June 25, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. You are also authorized to provide Public Assistance in the affected areas, if requested and necessary. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288, as amended by Pub. L. 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by the declared major disaster:

The parishes of Allen, Beauregard, Calcasieu, East Baton Rouge, Grant, Iberville, Natchitoches, Pointe Coupee, Rapides, and Winn for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89–17357 Filed 7–24–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

[Docket No. 89–17]

Savannah International Terminal, et al. v. Georgia Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by Savannah International Terminal ("SIT"), Zim Savannah Terminal, Inc., Zim-American Israeli Shipping Company Inc., and Zim Israel Navigation Co. ("Complainants") against the Georgia Ports Authority ("Respondent") was served July 20, 1989. Complainants allege that Respondent engaged in violations of sections 10(a) (2) and (3), 10(b) (11) and (12), and 10(d) (1) and (3) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a) (2) and (3), 1709(b) (11) and (12) and 1709(d) (1) and (3), by failing to act in accordance with a properly filed and effective agreement, engaging in unjust and unreasonable practices, giving undue and unreasonable preference or advantages by imposing conditions on complainant SIT that are not imposed on other lessees, and unreasonably refusing to deal with complainants SIT and ZIM.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are nexessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 20, 1990, and the final decision of the Commission shall be issued by November 20, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 89–17362 Filed 7–24–89; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P2-89]

Cruise Lines International Association; filing of Application for Section 16 Exemption

Notice is given that Cruise Lines International Association ("CLIA") has applied for an exemption pursuant to section 16, Shipping Act of 1984 ("the 1984 Act"), 46 U.S.C. app. 1715, and the Commission's implementing regulations, 46 CFR 572.301.

CLIA seeks an exemption from the notice and waiting period requirements of section 6 of the 1984 Act, and the Information Form, notice and waiting period requirements of 46 CFR Part 572, to the extent applicable to changes in the membership of Agreement No. 003-010071 ("the Agreement"), an agreement among passenger vessel operators to meet and discuss matters of common interest including marketing strategies for ocean cruise travel, and to train, bond and deal with travel agents. Specifically, CLIA seeks an exemption which would allow membership changes to the Agreement to become effective immediately upon filing. Moreover, CLIA requests a Commission order or rule which would provide for effectiveness upon filing of membership changes to passenger vessel discussion agreements open to all passenger vessels of a class defined in the agreement and consisting of 15 or more members, which do not contain ratemaking, pooling or joint service authority.

In order for the Commission make a thorough evaluation of the application for exemption, interested persons are requested to submit views or arguments on the application no later than August 28, 1989. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies. Responses shall also be served on counsel for "CLIA", Edward Schmeltzer, Esq., Schmeltzer, Aptaker & Sheppard, P.C., 2600 Virginia Avenue NW., Washington, DC 20037-1905.

Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street NW., Room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 89-17302 Filed 7-24-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010802-002
Title: Long Beach Terminal Agreement
Parties: City of Long Beach (City), Salen Shipping Agencies, Inc. (Salen)
Synopsis: The Agreement provides for the extension of the term of the basic preferential assignment agreement to September 19, 1991. Salen agrees to relinquish and release to the City such portion of its assigned premises as may reasonably be required to accommodate a rail right of way along Pier A Avenue of the Long Beach Container Terminal. All other terms and conditions of the basic agreement remain unchanged.

Agreement No.: 224-200267
Title: Tampa Terminal Agreement
Parties: Tampa Port Authority, B.S.L. Cruise, Inc.
Synopsis: The Agreement supercedes and cancels the parties' existing non-exclusive Preferential Use Agreement, No. 224-011044. Agreement No. 224-200267 provides for: (1) A corporate name change from Bermuda Star Line, Inc. to B.S.L. Cruises, Inc.; (2) a concurrent change in ownership; and, (3) the non-exclusive preferential use of terminal facilities, including parking and improvements for 200 vehicles.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 19, 1989.

[FR Doc. 89-17321 Filed 7-24-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010676-038
Title: South Europe/U.S.A. Freight Conference
Parties: Achille Lauro, Compania Transatlantica Espanola, S.A., Costa Container Line (A Division of Contship Containerlines Limited), d'Amico Societa di Navigazione, S.p.A., Evergreen Marine Corporation (Taiwan) Ltd., Farrell Lines, Inc., "Italia" di Navigazione, S.p.A., Jugolinija, Jugoceanija, Lykes Lines (Lykes Bros. Steamship Co., Ltd.), A.P. Moller-Maersk Line, Nedlloyd Lines (Nedlloyd Linjnen B.V.), Sea-Land Service, Inc., P & O Containers (TFL) Ltd., Zim Israel Navigation Company, Ltd.
Synopsis: The proposed modification would clarify existing procedures for the discussion and modification or cancellation of proposed or effective independent actions

Agreement No.: 203-011193-002
Title: Conbulk Carriers Agreement
Parties: Gearbulk Ltd. d/b/a Gearbulk Container Services, Star Shipping A/S, Westwood Shipping Lines
Synopsis: The proposed modification would delete Star Shipping A/S as a party to the Agreement.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

Dated: July 20, 1989.

[FR Doc. 89-17361 Filed 7-24-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barclays PLC, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 7, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC*, London, England; Barclays Bank PLC, London, England, Baybanks, Inc., Boston, Massachusetts, Chemical Banking Corporation, New York, New York, Manufacturers Hanover Corporation, New York, New York, National Westminster Bank PLC, London, England, Natwest Holdings Inc., New York, New York, Northeast Bancorp, Inc., New Haven, Connecticut, The Bank of New York Company, Inc., New York, New York, The Chase Manhattan Corporation, New York, New York, The Hong Kong and Shanghai Banking Corporation, Hong Kong, B.C.C., Kellett NV, Curacao, Netherlands Antilles, HSBC Holdings BV, Amsterdam, The Netherlands, Marine Midland Banks, Inc., Buffalo, New York, to acquire Datek Instacard Corporation, Buffalo, New York, and thereby engage in data processing and related activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hoosier Bancorp*, Rushville, Indiana (formerly Financial Dominion of Indiana Corporation); to acquire Hoosier Insurance, Ltd., Grand Turk, Turks & Caicos Island, British West Indies, and thereby engage in underwriting credit life insurance and credit life accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Crestwood Capital Corp., Minneapolis, Minnesota, and Crestwood Financial Corp., Minneapolis, Minnesota, and thereby engage in leasing personal or real property or acting as agent, broker, or adviser in leasing such property subject to conditions and restrictions of § 225.25(b)(5) of the Board's Regulation Y, and commercial finance pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17322 Filed 07-24-89; 8:45 am]

BILLING CODE 6210-01-M

First Channahon Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 11, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Channahon Bancorp, Inc.*, Naperville Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Westbank/Orland Park, Orland Park, Illinois (in organization).

2. *First Chicago Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of The Winnetka Bank, Winnetka, Illinois.

3. *Westbank Financial Corporation*, Naperville, Illinois; to acquire 96.6 percent of the voting shares of First Channahon Bancorp, Naperville, Illinois, and thereby acquire Westbank/Orland Park, Orland Park, Illinois (in organization).

Board of Governors of the Federal Reserve System, July 19, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17323 Filed 7-24-89; 8:45 am]

BILLING CODE 6210-01-M

Harmonia Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 11, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Harmonia Bancorp, Inc.*, Elizabeth, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Harmonia Savings Bank, Elizabeth, New Jersey.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Merchant Bank Corporation*, Atlanta, Georgia; to become a bank holding company by acquiring 25 percent of the voting shares of The Merchant Bank of Atlanta, Atlanta, Georgia.

2. *Employee Stock Ownership Trust of the People's Bank & Trust Company of Pickett County*, Byrdstown, Tennessee; to become a bank holding company by acquiring 30 percent of the voting shares of Upper Cumberland Bancshares, Inc., Byrdstown, Tennessee, and thereby indirectly acquire People's Bank & Trust Company of Pickett County, Byrdstown, Tennessee.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of First National Bancshares, Inc., Logansport, Indiana, and thereby indirectly acquire First National Bank of Logansport, Logansport, Indiana, and First National Bank of Indiana, Monticello, Indiana.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *FDH Bancshares, Inc.*, Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Fordyce, Fordyce, Arkansas, and Citizens First State Bank, Arkadelphia, Arkansas. Arkadelphia Bank engages in no insurance activities. Fordyce Bank owns an insurance agency that is located on the bank's premises. The insurance agency has been in operation since 1920, and is grandfathered under Arkansas law to engage in the sale of all insurance, with the exception of hospitalization insurance.

2. *M & P Community Bancshares, Inc.*, Newport, Arkansas, to become a bank holding company by acquiring at least 80 percent of the voting shares of Merchants and Planters Bank, Newport, Arkansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Surety Capital Corporation*, Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Texas National Bank of Lufkin, Lufkin, Texas.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Banco Nacional de Mexico, S.N.C.*, Mexico City, Mexico; Banamex Holding Company, Los Angeles, California, and Ammex Holding Company, Los Angeles, California, to acquire 100 percent of the voting shares of American National Bank—Post Oak, Houston, Texas.

Board of Governors of the Federal Reserve System, July 19, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17324 Filed 7-24-89; 8:45 am]

BILLING CODE 6210-01-M

Ira Hoberman; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 4, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Ira Hoberman*, Lakewood, New Jersey; to acquire 1.89 percent of the voting shares of First State Bancorp, Howell, New Jersey, and thereby indirectly acquire First State Bank, Howell, New Jersey.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *George A. DuBois*, Albuquerque, New Mexico; to acquire 3.34 percent; William J. Cooksey, trustee, Albuquerque, New Mexico; to acquire an additional 3.67 percent for a total of 7.72 percent; and Lloyd W. McKee, Albuquerque, New Mexico; to acquire an additional 5.06 percent of the voting shares of Western Bancshares of Albuquerque, Inc., Albuquerque, New Mexico, for a total of 7.06 percent, and thereby indirectly acquire Western Bank, Albuquerque, New Mexico.

2. *Bruce B. Morgan*, Kansas City, Missouri; and Donna L. McCoy, Shawnee, Kansas; to each acquire 50 percent of the voting shares of Polo Bancshares, Inc., Polo, Missouri, and thereby indirectly acquire Farmers Bank of Polo, Polo, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Harold P. Pfeiffer*, La Porte, Texas; to acquire 5.1 percent of the voting shares of Bay Bancshares, Inc., La Porte, Texas, and thereby indirectly acquire Bayshore National Bank.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alvin C. Rice*, Santa Rosa, California; to acquire an additional 37.16 percent of the voting shares of Marin National Bancorp, San Rafael, California, for a total of 37.4 percent, and thereby indirectly acquire First National Bank of Marin, San Rafael, California.

Board of Governors of the Federal Reserve System, July 18, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17325 Filed 7-24-89; 8:45 am]

BILLING CODE 6210-01-M

The Nippon Credit Bank, Ltd., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Nippon Credit Bank, Ltd.*, Tokyo, Japan; to engage *de novo* through its subsidiary, Eastbridge Capital Inc., New York, New York, a *de novo* company, to serve as investment adviser (as defined in section 2(s)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(20)), to an investment company registered under that Act, including sponsoring, organizing, and managing a closed end investment company pursuant to § 225.25(b)(4)(ii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bancorp, Inc.*, Naperville, Illinois; to continue to engage *de novo* in making, acquiring, or servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Erie Bancorp, Inc.*, Erie, Illinois, to engage *de novo* in making, acquiring, or servicing loans pursuant to section 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bank of Tokyo, Ltd.*, Tokyo, Japan; to engage *de novo* through BOT (Latin America), Inc., New York, New York, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Sterling Bancorporation*, Los Angeles, California; and Sterling Business Credit, Inc., Los Angeles, California, to continue to engage in lending, loan servicing and leasing personal property pursuant to § 225.25(b)(1) and (b)(5) of the Board's Regulation Y. Applicant proposes to expand its geographic area, previously authorized in Southern California, to include the entire United States.

Board of Governors of the Federal Reserve System, July 19, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–17326 Filed 07–24–89; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[File No. 872 3227]

Heilig-Meyers Co., Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Richmond, VA. corporation to calculate and disclose accurately the APRs that it discloses in connection with future extensions of consumer credit subject to the Truth in Lending Act. The order would also require respondents to make adjustments to the accounts of customers to whom it disclosed APRs that were understated by more than ¼ of one percentage point, except for accounts where the amount of the adjustment is less than one dollar.

DATE: Comments must be received on or before September 25, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Chris Couillou, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Rm. 1000, Atlanta, GA 30367. (404) 347–4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Argeement Containing Consent Order to Cease and Desist

In the matter of Heilig-Meyers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heilig-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc., corporations.

The agreeement herein, by and between Hilig-Merers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heilig-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc., corporations (hereafter sometimes referred to as "proposed respondents"), by their duly authorized officer and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

Paragraph One: Heilig-Meyers Company is a Virginia corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Two: Heilig-Meyers Company of Georgia is a Georgia corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Three: Heilig-Meyers Company of North Carolina is a North Carolina corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Four: Heilig-Meyers Company of Tennessee is a Tennessee corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Five: Sterchi Brothers Store, Inc., is a Delaware corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Six: Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

Paragraph Seven: Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) Any claim under the Equal Access to Justice Act.

Paragraph Eight: This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint comtemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

Paragraph Nine: This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

Paragraph Ten: This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist and make adjustments and refunds in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist and make adjustments and refunds shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in constructing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

Paragraph Eleven: Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Heilig-Meyers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heil-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc., their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension to any consumer of credit primarily for personal, family or household purposes, which credit is subject to a finance charge or payable by written agreement in more than four installments (not including down payment) and with regard to which the consumer is initially obligated to make repayment by the terms of a written agreement, do forthwith cease and desist from failing to calculate accurately and disclose clearly, conspicuously and accurately on the face of that written agreement the cost of credit expressed as a yearly rate as required by §§ 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22, and to use the term "annual percentage rate" to describe that rate, as required by § 226.18(e) of Regulation Z.

II

It is further ordered that within thirty days of the date of service of this order, respondents shall make adjustments to the current or past accounts of each customer in Alabama, Florida, Georgia, Kentucky and Tennessee, who was extended credit after February 28, 1986, and before August 1, 1987, in Alabama, before May 1, 1987, in Florida, before April 1, 1987, in Georgia, before October 1, 1987, in Kentucky, and before May 1, 1987, in Tennessee, and to whom respondents, in connection with such extension of credit, disclosed an annual percentage rate that was miscalculated by more than ¼ of 1 percentage point below the annual percentage rate determined in accordance with § 226.22 Regulation Z, 12 CFR 226.22, in transactions that did not include one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment), to assure that to the extent such customer has already paid or will pay any finance charges under the terms of a written agreement in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement plus a tolerance of ¼ of 1 percentage point so that the net result is that such customer is not required to pay any finance charges in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement, plus a tolerance of ¼ of 1 percentage point. For purposes of this section, respondents shall not be required to make adjustments to the accounts of customers where the amount of the adjustment is less than one dollar. Adjustment shall be made to the account of each customer under this section by mailing a check in the amount of the adjustment due to the current or last known address of each such customer.

III

It is further ordered that respondents shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order.

IV

It is further ordered that respondents shall distribute a copy of this order to each of their officers and to the managers of respondents' stores whose customers are due adjustments or refunds under this order.

V

It is further ordered that respondents shall notify the Commission at least thirty days prior to any proposed change in corporate from such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other changes in the corporations of respondents, including the creation or dissolution of subsidiaries, which may

affect compliance obligations arising out of the order.

VI

It is further ordered that respondents shall, within sixty days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner in which they have complied with this order, including, but not limited to, a full accounting as to the amounts of adjustments and refunds that have been made.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Heilig-Meyers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heilig-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents have disclosed annual percentage rates to consumers in Alabama, Georgia, Kentucky, Tennessee and Florida that were more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with § 226.22 of Regulation Z, 12 CFR 226.22, as a result of a clear and consistent pattern or practice of violations.

The proposed order requires respondents to calculate accurately and disclose accurately the annual percentage rates that are disclosed in connection with the extension of consumer credit. The proposed order also requires that respondents make adjustments to the accounts of customers to whom respondents disclosed annual percentage rates that were understated by more than ¼ of one percentage point except as noted below. This adjustments will be made to assure that to the extent a customer has already paid or will pay any finance charges under the terms of his or her written agreement with respondents in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement plus a tolerance of ¼ of 1 percentage point so that the net result is that such customer is not required to pay any finance charges in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement, plus a tolerance of ¼ of 1 percentage point. In accordance with section 108(e)(3)(B) of the Truth in Lending Act, 15 U.S.C. 1607(e)(3)(B), respondents shall not be required to make adjustments to the accounts of customers where the amount of the adjustment is less than one dollar.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Andrew J. Strenio, Jr. in Heilig-Meyers Co., File No. 872-3227, July 5, 1989

I have voted against this proposed consent agreement because it contains two major deficiencies. First, the consent would allow Heilig-Meyers Co. ("Heilig") to deduct 0.25% from its refunds to consumers who allegedly paid more in interest than the annual percentage rates ("APRs") Heilig specified in its installment contracts.[1] Second, the consent would allow Heilig to keep all redress dollars intended for qualified consumers who are not located.

The 0.25% Deduction

Section 108(e)(1)(B)(i) of The Truth-in-Lending Act [15 U.S.C. 1607(e)(1)(B)(i)] provides that in determining whether an APR disclosure error has occurred, and in calculating any adjustment, a tolerance not to exceed 0.25% will be applied. It has been argued that this language means the Commission should deduct 0.25% from any consumer redress for an asserted overcharge. However, such an interpretation would allow creditors to keep a portion that may be large in the aggregate of the allegedly ill-gotten gains they have acquired.

In my view, the better interpretation is that Congress intended to "tolerate" differences in actual versus stated APRs of up to 0.25% without requiring restitution. Presumably, this margin for error would reduce the burden of administering redress cases. But, once differences exceed 0.25%, complete restitution should be collected. This reading of the law enhances compliance and makes injured consumers whole.

The Retention of Uncollected Refunds

The proposed agreement also would require Heilig to make restitution to consumers by mailing checks to their current or last-known addresses. I believe Heilig will implement this requirement in good faith. Nonetheless, some portion will never be collected by consumers because, for example, they may have moved and no longer qualify to have their mail forwarded. Under the proposed consent agreement, Heilig presumably would be allowed to keep these undelivered amounts.

In my view, however, uncollected redress funds should not be retained by a distributing party. Such a practice weakens deterrence and may provide a disincentive for locating eligible consumers. Instead, any uncollected redress funds should either be paid if possible to some organization that may benefit the class or type of consumers involved here, or into the United States Treasury for general taxpayer relief.

Conclusion

Since the proposed consent is flawed in both these respects, I respectfully dissent from the majority's decision to provisionally accept the consent for comment.

[FR Doc. 89-17368 Filed 7-24-89; 8:45 am]

BILLING CODE 6750-01-M

[1] Heilig, to its credit, has sent redress checks that do not subtract the 0.25%. My objection is to the proposed consent agreement which would have allowed Heilig to subtract 0.25% and which could thereby create an ill-advised precedent for the FTC.

[File No. 891-0081]

MTH Holdings, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, MTH, an investment banking firm, to divest grocery stores in Vermont and New York to eliminate antitrust concerns that would be created by its acquisition of GU Acquisition Corporation.

DATE: Comments must be received on or before September 25, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S-3302, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with

§ 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the transaction pursuant to which MTH Holdings, Inc. (hereinafter "MTH") and Salomon Inc. (hereinafter "Salomon") will acquire the issued and outstanding stock of GU Acquisition Corporation (hereinafter "GUAC"), and MTH and GUAC (collectively, "the Proposed Respondents"), having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Proposed Respondents with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that the Proposed Respondents are willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and among the Proposed Respondents, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. MTH Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of New York with its executive offices located at 331 Madison Avenue, New York, New York 10017.

2. GU Acquisition Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its executive offices located at 25 Old Kings Highway Road, Darien, Connecticut 06820.

3. The Proposed Respondents admit all the jurisdictional facts set forth in the attached draft of complaint.

4. The Proposed Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to the Proposed Respondents' addresses as stated in this agreement shall constitute service. The Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. The Proposed Respondents have read the draft of complaint and Order contemplated hereby. The Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they each have fully complied with the Order. The Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

a. "Acquisition" means MTH's acquisition of the issued and outstanding common stock of GUAC.

b. "Commission" means the Federal Trade Commission.

c. "GND Holdings Corporation" means the entity formed by MTH and Salomon to acquire GUAC. GND Holdings Corporation includes its successors and assigns.

d. "The Grand Union Company" means an indrect wholly owned subsidiary of GUAC, through which GUAC is engaged in the retail grocery business. The Grand Union Company includes its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by GUAC and their respective directors, officers, employees, agents, partners, and representatives, and their respective successors and assigns.

e. "GUAC" means GU Acquisition Corporation, its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by GUAC and their respective directors, officers, employees, agents, partners, and representatives, and their respective successors and assigns.

f. "MTH" means MTH Holdings, Inc., its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by MTH (including P&C Food Markets, Inc.) and their respective directors, officers, employees, agents, partners, and representatives, and their respective successors and assigns.

g. "Respondents" means GUAC and MTH.

h. "Retail grocery store" means any retail food store of 10,000 or more square feet and which sells primarily a variety of canned or frozen foods; dry groceries; non-edible grocery items; fresh meat, poultry and produce (vegetables and fruits) and which often sells delicatessen items, bakery items, fresh fish or other specialty items.

i. "Schedule A Properties" means the assets and businesses listed in Schedule A of this Order.

j. "Schedule B Properties" means the assets and businesses listed in Schedule B of this Order.

k. "Properties" means the Schedule A Properties and the Schedule B Properties.

II

It is ordered that:

(A) Within nine (9) months of the date this Order becomes final, the Respondents shall divest, absolutely and in good faith (a) the Schedule A Properties, as well as any additional assets and businesses that (i) the Respondents may at their discretion include as a part of the assets to be divested and are acceptable to the acquiring entity and the Commission, or (ii) the Commission shall require to be divested to ensure the divestiture of the Schedule A Properties as ongoing, viable enterprises, engaged in the businesses in which the Properties are presently employed. Provided, however, the Respondents may only divest the stores of P&C Food Markets, Inc. listed in Schedule A if such stores have been operated consistent with past practices and the Respondents have in no way acted to reduce the value or competitive viability of such stores. Provided, further, the Respondents shall have twelve (12) months from the date this Order becomes final to divest, absolutely and in good faith the Schedule A property in Bennington, Vermont.

(B) The Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I, shall continue in effect until such time as the Respondents have divested either the Schedule A Properties or a trustee has divested the Schedule B Properties or until such other time as the Agreement to Hold Separate provides, and the Respondents shall comply with all terms of said Agreement.

(C) Divestiture of the Properties shall be made only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Properties is to ensure the continuation of the assets as ongoing, viable retail grocery stores engaged in the same businesses in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(D) The Respondents shall take such action as is necessary to maintain the viability and marketability of the Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered that:

(A) If the Respondents have not divested, absolutely and in good faith and with the Commission's approval, the Schedule A Properties within the time set out in Paragraph II(A), the Respondents shall consent to the appointment by the Commission of a trustee to divest the Schedule B Properties. In the event that the Commission brings an action pursuant to 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45 (*l*), or any other statute enforced by the Commission, the Respondents shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties or any other relief available to it for any failure by the Respondents to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph III(A) of this Order, the Respondents shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to divest the Schedule B Properties.

(3) The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or by the court for a court-appointed trustee. Provided, however, that the Commission or court may only extend the divestiture period two (2) times.

(4) The trustee shall have full and complete access to the personnel, books, records and facilities related to those asssets that the trustee has the duty to divest. The Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. The Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures.

(5) Subject to the Respondents' absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II(C) of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Schedule B Properties. The divestiture shall be made in the manner set out in Paragraph II(C); provided, however, if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such purchaser, the trustee shall divest to the acquiring entity or entities selected by the Respondents from among those approved by the Commission.

(6) The trustee shall serve at the cost and expense of the Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set, including the employment of accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents and the trustee's power shall be terminated. The trustee' compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule B Properties.

(7) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, the Respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III (A) of this Order.

(9) The trustee shall report in writing to the Respondents and the Commission every sixty (60) days from the date of appointment concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until the Respondents have fully complied with the provisions of

Paragraphs II and III of this Order, the Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying or have complied with those provisions. The Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture of assets or businesses specified in Paragraph II of this Order, including the identity of all parties contacted. The Respondents also shall include in their compliance reports, copies of all written communications to and from such parties, all internal memoranda, reports and recommendations concerning divestiture, and a description of the status of all regulatory proceedings filed in accordance with this Order.

V

It is further ordered that, for a period commencing on the date this Order becomes final and continuing for ten (10) years, the Respondents shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, any retail grocery store or leasehold interest in any retail grocery store, including any facility that has operated as a retail grocery store within six (6) months of the date of the offer of purchase, or any interest in or the stock or share capital of any entity that owns any interest in or operates any retail grocery store, or any interest in or the stock or share capital of any entity that owned any interest in or operated any retail grocery store within six (6) months of the date of the offer of purchase in the following counties:

1. Chittenden County, Vermont
2. Windham County, Vermont
3. Rutland County, Vermont
4. Washington County, Vermont
5. Lamoille County, Vermont
6. Windsor County, Vermont
7. Bennington County, Vermont
8. Essex County, New York
9. Schoharie County, New York
10. Otsego County, New York.

(Hereinafter "Retail Grocery Interests"). Provided, however, that these prohibitions shall not relate to the construction of new facilities or the leasing of facilities that have not operated as retail grocery stores within six months of the date of the offer to lease. Provided, further, that the Respondents may acquire, for investment purposes only, an interest of not more than five (5) percent of the stock or share capital of any concern. Provided, additionally, only if, the Respondents have provided the Commission with thirty (30) days prior notice of the acquisition set out in this proviso, these prohibitions shall not relate to the acquisition of an interest in the stock or capital share of any concern that has no Retail Grocery Interests at the time the Respondents announce to the public an intention to acquire an interest in the concern and has no more than 40,000 square feet of Retail Grocery Interests at the time of the acquisition of the stock or capital share of said concern.

One (1) year from the date this Order becomes final and annually for nine (9) years thereafter the Respondents shall file with the Federal Trade Commission a verified written report of their compliance with this Paragraph.

VI

It is further ordered that the Respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

Schedule A—Assets, Interests and Businesses

The retail grocery store presently owned or operated by The Grand Union Company or by P&C Food Markets, Inc. in the following locations:

1. One (1) in Morrisville, Vermont;
2. One (1) in Barre/Montpelier/Berlin, Vermont;
3. One (1) in Windsor, Vermont;
4. One (1) in Springfield, Vermont;
5. One (1) in Brattleboro, Vermont;
6. One (1) in Bennington, Vermont;
7. One (1) in Manchester, Vermont;
8. Two (2) in the Rutland, Vermont area, which area shall include North Clarendon and West Rutland, Vermont;
9. Four (4) in the Burlington, Vermont, Metropolitan Statistical Area;
10. One (1) in Cobleskill, New York;
11. One (1) in Ticonderoga, New York; and
12. One (1) in Oneonta, New York.

The assets to be divested shall include the grocery business operated, all assets, inventory, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations.

Schedule B—Assets, Interests and Businesses

All the retail grocery stores presently owned or operated by The Grand Union Company in the following locations:

1. Chittenden County, Vermont
2. Windham County, Vermont
3. Rutland County, Vermont
4. Washington County, Vermont
5. Lamoille County, Vermont
6. Windsor County, Vermont
7. Bennington County, Vermont
8. Ticonderoga, New York
9. Schoharie County, New York
10. Otsego County, New York.

The assets to be divested shall include the grocery business operated all assets, inventory, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations.

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among MTH Holdings, Inc., a corporation organized and existing under the laws of the State of New York, with its executive offices located at 331 Madison Avenue, New York, New York 10017 ("MTH"); GU Acquisition Corporation ("GUAC"), a corporation organized and existing under the laws of the State of Delaware, with its executive offices located at Darien, Connecticut; Salomon Inc., a corporation organized and existing under the laws of the State of Delaware with its executive offices located at One New York Plaza, New York, NY 10004 (collectively, "the Parties"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Premises

Whereas, The Grand Union Company, GND Holdings Corporation, an entity controlled by MTH and Salomon, and GND Transitory Corporation, a wholly-owned subsidiary of GND Holdings Corporation, executed a Merger Agreement dated as of April 8, 1989 for all of the issued and outstanding common stock of GUAC (the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public

record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of The Grand Union Company's Northern Division operaitons during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in Schedule A to the Consent Order (the "Schedule A Properties") or Schedule B of the Consent Order ("Schedule B Properties") and the Commission's right to seek to restore The Grand Union Company's Northern Division as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve The Grand Union Company's Northern Division's businesses as viable independent businesses pending the divestiture of the Schedule A or Schedule B Properties as viable and ongoing enterprises,

(ii) Remedy any anticompetitive effects of the Acquisition, and

(iii) Preserve The Grand Union Company's Northern Division's businesses as ongoing, viable businesses engaged in the same business in which they are presently employed in the event that divestiture is not achieved; and

Whereas, the Parties' entering into this Agreement shall in no way be construed as an admission by the Parties that the Acquisition is illegal; and

Whereas, the Parties understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the Parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestitures are not accomplished, to seek divestiture of such assets as are held separate pursuant to this Agreement, as follows:

1. The Parties and the Commission agree that each word defined in the Consent Order shall have the same definition in this Agreement. The Respondents agree to execute and be bound by the Consent Order. The Parties agree that the affirmative vote of the Salomon Directors of GND Holdings Corporation shall not be required for the approval of any resolution in furtherance of compliance with the Consent Order. No Party shall interfere in any way with compliance with said Order.

2. The Parties agree that from the date of the Commission accepts this Agreement until the first to occur of (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or (ii) if the Commission issues the Consent Order finally, until all of the divestitures required by the Consent Order have been completed, the Parties shall hold separate and apart on the terms and conditions set forth below in this paragraph all of The Grand Union Company's Northern Division's assets and business operations as they existed before the Acquisition, including the 135 retail grocery stores operated by The Grand Union Company in upstate New York, Vermont, New Hampshire, and Massachusetts, the two (2) Company grocery warehouse/distribution centers operated within the Divison (except that the Grand Union Company may proceed with its pre-existing plans to close the Waverly, N.Y. distribution center), inventory, accounts receivable, distribution, manufacturing facilities, and all related properties and facilities (hereinafter "the Northern Division"). Except as otherwise provided herein:

a. The Northern Division shall be operated independently of MTH.

b. MTH shall not exercise direction or control over, or influence directly or indirectly, the Northern Division or any of its operations or businesses; provided, however, that MTH may exercise such directon and control over the Northern Division as is necessary to assure compliance with this Agreement.

c. GUAC and The Grand Union Company shall maintain and the Parties shall take no steps to diminish the viability and marketability of the Northern Division. The Parties shall not sell, transfer, mortgage, pledge, encumber, or otherwise impair its marketability or viability (other than in the normal course of business); provided, however, that the assets of the Northern Division may be encumbered in connection with the Acquisition and the refinancing of existing indebtedness of GND Holdings Corporation, GUAC or The Grand Union Company. GUAC and The Grand Union Company shall remove such encumbrances from the assets of the Northern Division prior to any divestiture of any such assets ordered by a court or by the Commission. If necessary, GUAC and The Grand Union Company shall cause capital funds to be available to the Northern Division so that the Division has sufficient funds to operate consistent with its existing five year capital and operating plans.

d. Except for the single MTH and the single Salomon director, officer, employee, partner or agent serving on the "Management Committee" (as defined in subparagraph 2.h) MTH shall not permit any director, officer, employee, partner or agent of MTH or Salomon to also be a member of the Management Committee or employee of the Northern Division.

e. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating an agreement to dispose of assets, or as may be necessary to make or comply with convenants, representations or warranties in connection with existing agreements, the acquisition indebtedness or refinancings thereof with any financial institution or with any third party in an existing arm's length transaction, MTH shall not receive or have access to, or the use of, any of the Northern Division's "material confidential information" not in the public domain, except as such information would be available to MTH in the normal course of business if the acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to MTH from sources other than GUAC and includes but is not limited to customer lists, price lists, marketing methods, technologies, processes, or other trade secrets).

f. The Parties shall not cause any change in the composition of the management of the Northern Division except that members of the Northern

Division's Management Committee (as defined in subparagraph 2.h) shall have the power to remove employees for poor performance or cause.

g. Except in connection with the divestiture to be made in compliance with the Consent Order, all material transactions, out of the ordinary course of business and not otherwise precluded by this Paragraph 2 shall be subject to a majority vote of the Management Committee (as defined in subparagraph 2.h).

h. The Parties shall cause GUAC to create a five person Management Committee once they are majority shareholders of GUAC. The Parties may select the members of the Management Committee; provided, however, that such Committee shall consist of one MTH and one Salomon director, officer, employee, partner or agent and three current employees of The Grand Union Company of which two shall be current employees of the Northern Division. Subject to the same exceptions as in subparagraph 2.e, the member of the Management Committee who is also an MTH director, officer, employee, partner or agent, shall not receive in his or her capacity as a member of the Management Committee material confidential information and shall not disclose any such information received under this Agreement to MTH or use it to obtain any advantage for MTH. Said member of the Management Committee who is also an MTH director, Officer, employee, partner or agent, shall enter a confidentiality agreement prohibiting disclosure of confidential information. Such member of the Management Committee shall participate in matters which come before the Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding $5,000,000 and carrying out MTH's and the Northern Division's responsibility to assure that Schedule A Properties and the Schedule B Properties of the Consent Order are maintained in such manner as will permit their divestiture as ongoing, viable assets. Except as permitted by this Agreement, such member of the Management Committee shall not participate in any matter, or attempt to influence the votes of the other members of the Management Committee with respect to matters that would involve a conflict of interest if MTH and the Northern Division were separate and independent entities. Meetings of the Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

i. Nothing herin shall prevent the Management Committee or the Parties from negotiating or entering into agreements to dispose of the Northern Division's assets, provided that any disposition shall be made only to a buyer or buyers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

j. The Grand Union Company shall continue to prepare separate periodic store and division statements of revenue, expenses and profitability for the Northern Division, and the Parties shall, within ten (10) days after they become available to the Parties, provide the Commission's Bureau of Competition with monthly statements of divisional contribution and annual financial statements for the Northern Division, which annual financial statements shall be audited and certified by independent certified public accountants.

k. The Parties shall not, directly or indirectly, pay any dividends (other than dividends payable in securities of GND Holdings Corporation) in shares of capital stock of GND Holdings Corporation, including without limitation any redemption of shares of its capital stock for any consideration other than securities of GND Holdings Corporation and shall not otherwise make any distribution to MTH or Salomon, in respect of their ownership interest, out of the proceeds of any sales of assets of The Grand Union Company.

l. Consistent with the Northern Division's use of its warehouse, distribution and manufacturing facilities in such a way as to assure the maintenance of the Northern Division as a viable competitor, the Northern Division's warehouse, distribution and manufacturing facilities may supply stores operated by the other divisions of the Grand Union Company or by P&C, provided that such other entities shall pay the Northern Division in accordance with the Northern Division's current established procedures for supplying unaffiliated stores. The warehouse, distribution and manufacturing facilities of other divisions of The Grand Union Company shall supply the Northern Division in accordance with The Grand Union Company's current established procedures for supplying the Northern Division.

m. Should the Federal Trade Commission seek in any proceeding to compel MTH and Salomon to divest themselves of the Northen Division or GUAC, the Parties shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. The Parties also waive all rights to contest the validity of this Agreement.

3. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice ot the Parties made to their principal offices, the Parties shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of the Parties or GUAC and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Parties and GUAC relating to compliance with this Agreement;

b. Upon five (5) days notice to the Parties or GUAC and without restraint or interference from it, to interview officers or employees of the Parties or GUAC, who may have counsel present, regarding any such matters.

4. This Agreement shall expire if within 120 days after a filing on the public record of any complete application to divest Schedule A or Schedule B Properties, the Commission does not approve or disapprove of that application. Provided, however, the Commission may reject any application within the 120 day period if in its sole discretion it believes that it did not have sufficient time or information to approve the application.

5. This agreement shall not be binding until approved by the Commission.

Analysis to Aid Public Comment on Consent Order Accepted Subject to Final Approval

The Federal Trade Commission ("Commission") has accepted for public comment from MTH Holdings, Inc. an agreement containing a consent order. The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerned the proposed acquisition of GU Acquisition Corporation by MTH Holdings Inc. ("MTH") and Salomon Inc ("Salomon"). GU Acquisition Corporation wholly

owns The Grand Union Company ("Grand Union"), which operates 304 retail grocery stores in the United States. MTH holds the majority of outstanding shares of the Penn Traffic Co., which controls P & C Food Markets, Inc. ("P & C"), a retail grocery store chain.

The Commission has reason to believe that MTM's acquisition on Grand Union would substantially lessen competition in twelve towns and cities in New York and Vermont in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The towns and cities where competition would be substantially lessened include the following: Cobleskill, N.Y.; Oneonta, N.Y.; Ticonderoga, N.Y.; Barre/Montpelier/Berlin, Vt.; Bennington, Vt.; Brattleboro, Vt.; Burlington, Vt., Metropolitan Statistical Area; Manchester, Vt.; Morrisville, Vt.; Rutland, Vt. (including the North Clarendon and West Rutland areas); Springfield, Vt.; and Windsor, Vt.

The agreement containing the Consent Order ("Order") would, if issued by the Commission, settle the complaint that alleges anticompetitive effects as a result of the acquisition in the twelve towns and cities listed above.

Under the terms of the proposed Order, MTH must divest one retail grocery store presently owned or operated by either P&C or Grand Union in the following towns: Cobleskill, N.Y.; Oneonta, N.Y.; Ticonderoga, N.Y.; Barre/Montpelier/Berlin, Vt.; Bennington, Vt.; Brattleboro, Vt.; Manchester, Vt.; Morrisville, Vt.; Springfield, Vt.; and Windsor, Vt. MTH must also divest two retail grocery stores presently owned or operated by either P&C or Grand Union in Rutland, Vt. (including the North Clarendon and West Rutland areas) and four retail grocery stores presently owned or operated by either P&C or Grand Union in the Burlington, Vt.; Metropolitan Statistical Area. Under the proposed Order, all of these divestitures, except Bennington, Vt., must occur within nine months. The required divestiture in Bennington, Vt., must occur within twelve months.

If MTH fails to complete the required divestitures within the required time period, the Commission may authorize a trustee to divest all of the retail grocery stores presently owned or operated by Grand Union in the following locations: Ostego County, N.Y.; Schoharie County, N.Y.; Ticonderoga, N.Y.; Bennington County, Vt.; Chittenden County, Vt.; Lamoille County, Vt.; Rutland County, Vt.; Washington, Vt.; Windham County, Vt.; and Windsor County, Vt.

Under the Hold Separate Agreement, Grand Union's Northern Division must operate separately from the rest of the Company until all the divestitures required by the Commission Order have been made. The Northern Division consists of 135 stores in upstate New York, Vermont, New Hampshire and Massachusetts, and two warehouses in Waterford, N.Y. and Waverly, N.Y. Under the Hold Separate Agreement, MTH and Salomon must form a five-person Management Committee consisting of one member from Salomon, one member from Grand Union, one member from MTH and two members from Grand Union's Northern Division. The Management Committee will be responsible for operating Grand Union's Northern Division. The Management Committee does not require permission of either the MTH or Salomon member to make decisions for the Northern Division.

For a period of ten (10) years from its effective date, the proposed Order prohibits MTH and Grand Union from making substantive acquisitions of assets or businesses that operate retail grocery stores without prior Commission approval.

It is anticipated that the Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and Order, nor is it intended to modify the terms of the agreement and Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89-17369 Filed 7-24-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Clinical Chemistry and Clinical Toxicology Devices Panel

Date, time, and place. August 11, 1989, 9 a.m., Rm. 4131-4137, Wilbur Cohen Bldg., 330 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Kaiser J. Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1096.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 1, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for the measurement of cyclosporine by fluorescence polarization immunoassay technology.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not

last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion if time permits at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FOA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: July 18, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 89–17333 Filed 7–24–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 83N–0193]

Development of FDA's Draft Proposed Standard for Infant Apnea Monitors; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a 2-day public meeting to discuss certain issues related to the development of the proposed standard for infant apnea monitors. FDA is inviting interested persons, including device manufacturers, health professional organizations, industry and consumer groups, and health educators to attend the meeting. Because of space constraints, attendance can be assured only for those persons who make written reservations.

DATES: The public meeting will be held on Monday, September 11, 1989, from 8 a.m. to 5 p.m., and on Tuesday, September 12, 1989, from 8 a.m. to 3 p.m., at the Conference Theater of the Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.

ADDRESSES: Written registration is required. Registration information can be obtained by calling 301–443–4874 or writing to the following address: Gloria Richendrfer (HFZ–84), Office of Standards and Regulations, Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857. Registration will be limited to 100 people because of room-size restrictions.

Interested persons who will be unable to attend the meeting may submit written comments that set forth their views on the objectives outlined in this notice.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number

found in brackets in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: E. Jane McCarthy, Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under 21 CFR 861.30, FDA shall provide interested persons an opportunity to participate in the development of a standard by accepting comments, and where appropriate, holding public meetings on issues relating to development oi the standard. Therefore, FDA is announcing that it will hold an open public meeting, to discuss the issues described below, on September 11 and 12, 1989, at the Crowne Plaza Holiday Inn (address above).

In the **Federal Register** of January 4, 1989 (54 FR 187), FDA announced the availability of its "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988," to request public comment. On January 25, 1989, in conjunction with the Seventh Annual Conference on Apnea of Infancy held in Rancho Mirage, CA, FDA held a public meeting to discuss the draft standard.

Based on 22 written comments received in response to the **Federal Register** notice and comments and information received at the public meeting, FDA has begun its revision of the draft proposed standard. It is expected that this revised draft will be sent out for public review in October 1989. Some of the changes which are being considered for incorporation into this draft of the standard include specifying different requirements for modular and stand-alone monitors and specifying detailed test methods for assuring compliance with the requirements.

The purpose of this public meeting is to discuss the current sensor modalities and devices used to measure infant apnea, combinations of sensors used to detect apnea and the pathophysiological result of apnea, and the currently used test methods. It is expected that this information will be used to develop the mandatory performance standard for infant apnea monitors. Invited speakers and their panels will discuss the issues, and questions will be solicited from the audience. The specific objectives of the open meeting are:

1. To describe the problems in sensing and monitoring of central, obstructive, and mixed apnea. The bench and clinical test methods used to evaluate this capability, including the acceptable range of false negatives and false positives, will be discussed.

2. To describe the combinations of primary and secondary sensor modalities used in the detection of infant apnea which are most effective in measuring apnea and the pathophysiological results of apnea. Bench and clinical testing as well as the acceptable range of false negatives and false positives for each of these sensing modalities will be described.

3. To describe the types of infant apnea monitors used in the home and the current effectiveness testing being done with these monitors. Aspects which may be unique to apnea monitors in this environment will be described.

4. To define the minimum test requirements for effectiveness which should be included in a standard for infant apnea monitor devices.

A summary of the proceedings of the open public meeting, as well as all data and information submitted voluntarily to FDA during the public meeting, will become part of the administrative record and will be available to the public under 21 CFR 20.111 from. the Dockets Management Branch (address above). FDA projects that it will prepare and make available for comment a second draft of the standard in October 1989, before publishing in the **Federal Register** a proposed mandatory standard under section 514 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360d and 21 CFR 10.40).

All documents and comments related to the draft proposed standard may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–17334 Filed 7–24–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of August 1989:

Name: National Advisory Committee on Rural Health, Health Professions Work Group

Date and Time: August 8, 1989, 2:00 p.m., e.d.t.

Place: Room 14–22 Parklawn Building, Office of Rural Health Policy, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Work Group is concerned with the supply and distribution of health personnel in rural areas.

Agenda: This meeting will be conducted through a telephone conference call. The Work Group will discuss an options paper on health manpower programs and set the agenda for the September meeting.

Anyone requiring information regarding the subject Committees should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Persons interested in attending any portion of the above meeting should contact Ms. Arlene Granderson, Program Analyst, Office of Rural Health Policy, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

Date: July 20, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–17335 Filed 07–24–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting of the Cancer Center Support Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, August 2–3, 1989, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on August 2, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on August 2, from approximately 9:30 a.m. to 6:00 p.m. and August 3, from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential

trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301–496–9767) will furnish substantive program information.

Dated: July 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–17414 Filed 7–24–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Establishment of Three Indian Reservations in California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Reservation Proclamation for Hopland, Coyote Valley and Karok.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. Notice is hereby given that, under the authority of Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), the hereinafter described lands located in Mendocino and Siskiyou Counties, California, were proclaimed to be Indian reservations, effective June 23, 1989, for the exclusive use of Indians entitled by enrollment or tribal membership to residence at such reservation.

Coyote Valley Reservation

Mount Diablo Meridian, Mendocino County, California

Those portions of the north half of the southeast quarter of the southeast quarter of section 9, Township 16 North, Range 12 West, described as follows:

Parcel 1: All that a portion of the following described real property lying northerly and easterly of the most easterly line of Highway 101 as it existed January 1, 1979:

Beginning at a point marked "BL" standing in the channel of Russian River at the junction of—Forsythe Creek with the west fork of Russian River, from which on the 17th day of December 1866, an alder tree one foot in diameter bore north 58 west, 4 chains; thence 89 degrees 45' west, along the south line of Lot 124 of Healey's Survey and Map of the Yokayo Rancho, a distance of 1960.4 feet to a point in the center of the California State Highway from which point a post marked "B.M." bears north 89 degrees 45' west, 50 feet distant; thence along the center line of said highway north 57 degrees 27' west, 1602.08 feet to Station 416.+69.6 of said Highway Survey, from which point post "Y No. 67" of the Yokayo Rancho, bears south 18 degrees west, 129.45 feet distant; thence leaving said Highway and run north 20 degrees 49' east, 2013.49 feet to a post from which a white oak tree 16 inches in diameter marked "X–BT–RED" bears north 10 degrees 25' east, 135 feet distant, and a white oak tree 18 inches in diameter marked "X–BT–RED" bears north 59 degrees 45' east, 197.40 feet distant, thence south 87 degrees 53' east, 2316.82 feet to a stake in the east line of said Lot 124 from which a white oak tree 24 inches in diameter marked "F–BT–RED" bears north 20 degrees west, 62 feet distant and a black oak tree 16 inches in diameter marked "F–BT–RED" bears south 10 degrees west, 63.15 feet distant; thence south 17 degrees east, along the east line of said Lot 124, 1253 feet to the center of the channel of Russian River; thence down the center of the channel of said river and following its meanderings to the point of beginning, being a part of said Lot 124 of Healey's Survey Map of the Yokayo Rancho.

Saving and Excepting Therefrom:

(1) All that certain real property described in the Deed from William Finne to Leonard Bruesch, recorded December 18, 1916, in Book 139 of Deeds, Page 228, Mendocino County Records.

(2) All that certain real property described in the Deed from Fred Finne, et. ux, to A. O. Boyd, recorded September 17, 1924, in Book 170 of Deeds, Page 391, Mendocino County Records.

(3) All that certain real property described in the Deed from Fred Finne, et. ux, to Mrs. Ella Boyd, recorded September 21, 1943, in Book 184 of O. R., Page 426, Mendocino County Records.

(4). All that certain real property described in the Deed from Fred Finne, et. ux, to L. N. Barber, recorded December 6, 1928, in Book 37 official Records, Page 61, Mendocino County Records.

(5). All that certain real property described in the Deed from Fred Finne, et: ux, to Leland S. Murphy, et. al, recorded December 16, 1929, in Book 48 Official Records, Page 31, Mendocino Records.

(6). All that certain real property described in the Deed from Fred Finne, et. ux, to J. E. Russell, et. ux, recorded July 9, 1930, in Book 52 Official Records, Page 351, Mendocino County Records.

(7). All that certain real property described in the Deed from Fred Finne, et. ux, to State of California recorded February 11, 1946, in Book 194 Official Records, Page 260, Mendocino County Records.

(8). All that certain real property described in the Deed from Fred Finne, et. ux, to Frank Williams, recorded April 4. 1949, in Book 242 Official Records, Page 138, Mendocino County Records.

Parcel 2: That portion of Lot 124 of Healey's survey and Map of Yokayo Rancho, bounded on the north by the westerly prolongation of the course having a bearing and length of north 87 degrees 53' west, 2316.82 feet, in Deed from William Finne to Lemuel Keithly, dated November 27, 1936, recorded in Liber 109, page 272, of Official Records, of Mendocino County; on the southeast by the course in said Deed having a bearing and length of south 20 degrees 49' west 2013.49 feet; and on the southwest by the course in the northeasterly line of the State Highway described third in Deed from Carl E. Peterson, et. al, to the State of California, dated January 10, 1946, recorded in Book 198, Page 146, of Official Records. Containing 57.76 acres, more or less, after the above exceptions.

Hopland Reservation

Mount Diablo Meridian, Mendocino County, California

Those certain parcels of land, as listed below, being portions of the Sections 10, 11, 15, and 22, Township 13 North, Range 11 West, all located within the exterior Boundaries of the Hopland Rancheria as shown on the Record of Survey of the Hopland Rancheria recorded May 26, 1964, in Case 2 of Maps, Drawer 3, Page 14, in the Office of the Recorder, County of Mendocino, State of California: Parcel Six (6).

Parcel Forty-eight (48), excepting therefrom the following: Beginning at the southeast corner of said Parcel 48; thence North 89 degrees 48' West, 301.52 feet; thence in a northeasterly direction to the northeast corner of said Parcel 48;

thence South 232.49 feet to the point of beginning.

Said parcels containing 21.89 acres, more or less.

Karok Reservation

Humboldt Meridian, Siskiyou County, California

Parcel I and II as shown on the Parcel Map for Milton C. Kevershan located in Section 2, Township 16 North, Range 7 East, Filed January 6, 1976, in Parcel Map Book 3, Page 113. Said parcels containing 10.65 acres, more or less.

Said land being subject to all valid rights, reservation, rights-of-way and easement of record.

W. P. Ragsdale,

Deputy to the Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 89-17338 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV020-4320-02]

Winnemucca District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and section 3, Executive Order 12548 February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board wi11 be held on September 7, 1989. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management, Office at 705 East Fourth Street Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Pub1ic Statement—10:00 a.m.
2. District Manager's Update
3. Update on Appeal of 14 Agreements
4. Update on So1dier Meadows and Rodeo Creek Allotment Management Plans.
6. Range Improvement Funds: FY89 Projects, FY90 Projects, FY91 Projects.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager,705 East Fourth Street, Winnemucca, Nevada 89445 by August 18, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be estab1ished by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: Ju1y 17, 1989.

Ron Wenker,

District Manager.

[FR Doc. 89-17339 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-HC-M

[ID-943-09-4212-13; I-25586]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Dyle Robertson Limited Partnership, Rexburg, Idaho 83440, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian

T. 7 N., R. 37 E.,
Sec. 17, SE¼NW¼;
Sec. 18, NE¼SE¼.
Comprising 80.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian

T. 7 N., R. 37 E.,
Sec. 28, NE¼SW¼.
T. 8 N., R. 39 E.,
Sec. 18, SE¼NW¼.
Comprising 80.00 acres of private land.

The purpose of the exchange was to acquire the non-federal lands which have high public value for elk winter range. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were both appraised at $8,000.

Dated: July 14, 1989.

Duane E. Olsen,

Acting, Deputy State Director for Operations.

[FR Doc. 89-17340 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-99-M

[OR-943-09-4214-10; GP9-284; OR-36647]

Conveyance of Public Land; Oregon

AGENCY: Bureau of Land Mangagement, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the Conveyance of 40 acres of public land out of Federal ownership.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of Lands as published in the **Federal Register** dated July 8, 1988, made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 40 acres of land in Klamath County, Oregon, from Federal to private ownership and are described as follows:

Willamette Meridian

T. 40 S., R. 14 E.,
Sec. 6, SE¼SE¼.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: June 12, 1989.

[FR Doc. 89-1734 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-09-4213-10; GP9-287; OR-45225(WASH)]

Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 640 acres of National Forest System lands for protection of the North Cascades Scenic Highway Zone. This notice closes the lands for up to 2 years from location and entry under the United States Mining laws.

DATE: Comments must be received by October 31, 1989.

ADDRESS: Comments should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208; 509-231-6905.

SUPPLEMENTARY INFORMATION: On July 13, 1989, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the mining laws, subject to valid existing rights:

Willamette Meridian

Mt. Baker, Okanogan, and Wenatchee National Forests

A strip of land varying widths of from 200 to 2,000 feet on each side of and running parallel and concentric with the monumented centerline of State Highway 20 through the following described townships and sections as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office, and excepting any portions thereof that lie within the existing withdrawals made by Public Land Order No. 3794 of August 17, 1965, Public Land Order No. 3380 of April 8, 1964, and Public Land Order No. 4555 of November 18, 1968:

T. 37 N., R. 14 E., Unsurveyed,
Secs. 10, 11, 12, and 13.
T. 36 N. R. 16 E., Unsurveyed,
Secs. 3, 4, 10, 11, 14, 15, 23, 24, 25, and 36.
T. 37 N., R. 16 E., Unsurveyed,
Secs. 17, 20, 21, 28, 29, 33, and 34.
T. 35 N., R. 17 E., Unsurveyed,
Secs. 5, 6, 7, 8, 13, 16, 17, 21 to 28, inclusive, and 35.
T. 36 N., R. 17 E., unsurveyed,
Sec. 31.
T. 35 N., R. 18 E., Unsurveyed,
Secs. 5, 8, 17, 18, 19, and 20.
T. 36 N., R. 18 E., unsurveyed,
Secs. 21 to 29, inclusive, 32, and 33.
T. 36 N., R. 19 E., unsurveyed,
Secs. 19, 20, 27, 28, 29, 30, 32, and 33.

The areas described aggregate, after making the above-mentioned exceptions, approximately 640 acres in Chelan, Okanogan, Skagit, and Whatcom Counties, Washington.

The purpose of the proposed withdrawal is to protect portions of the North Cascades Scenic Highway Zone that are not already protected by existing withdrawals. Said highway zone extends for a distance of approximately 38 miles between the easterly boundary of the Ross Lake National Recreation Area and a point located approximately one mile west of the Early Winter Ranger Station.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing on or before October 31, 1989, to the Oregon/Washington State Director, Bureau of Land Management, at the address indicated above.

Notice is hereby given that an opportunity for public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard must submit a written request to the Oregon/Washington State Director, Bureau of Land Management, on or before October 31, 1989. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 90 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register** and subject to valid existing rights, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The Forest Service has authority to permit all temporary uses during the segregative period with the exception of the disposal of the mineral resources under the mining laws.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands.

Dated: July 17, 1989.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-17342 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8671, Block 257, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 14, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 17, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-17343 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Contract Negotiations; Adrift Adventures, Inc., et al.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate concession contracts with Adrift Adventures, Inc.; Adventure Bound, Inc.; American River Touring Association; Colorado Outward Bound School, Inc.; Don Hatch River Expeditions, Inc.; Holiday River Expeditions, Inc.; Le Grand Adventures;

Don Neff River Company; Peak River Expeditions; Ken Sleight Expeditions; and World Wide River Expeditions, Inc. authorizing them to continue to provide guided white water interpretive river float trips for the public at Dinosaur National Monument, Colorado for a period of five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: September 25, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing permits which expire by limitation of time on December 31, 1989, and therefore, pursuant to the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), are entitled to be given preference in the renewal of the new contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Jack W. Neckels,

Acting Regional Director, Rocky Mountain Region.

Date: June 15, 1989.

[FR Doc. 89-17374 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations; Isle Royale Seaplane Service, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Isle Royale Seaplane Service, Inc. authorizing it to continue to provide air transportation facilities and services for the public at Isle Royale National Park, Michigan for a period of five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: September 25, 1989.

ADDRESS: Interested parties should contact the Regional Director, Midwest Region, 1709 Jackson St., Omaha, NE 68102, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environment Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed it's obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Don H. Castleberry

Regional Director, Midwest Region.

Date: July 20, 1989.

[FR Doc. 89-17375 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 15, 1989. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Writen comments should be submitted by August 9, 1989.

Amy Schlagel,

Acting Chief of Registration, National Register.

ARIZONA

Yavapai County

Pine Crest Historic District, Roughly bounded by San Carlos St., Coronado Ave., and Yavapai, Apache, and Mohave Drs., Prescott, 89001074

West Prescott Historic District, Roughly bounded by Gurley Dr., Park Ave., Country Club Dr., Vista Dr., and Coronado Ave., Prescott, 89001075

CALIFORNIA

El Dorado County

Van Buren Place Historic District, 2620—2657 Van Buren Pl., Los Angeles, 89001103

CONNECTICUT

Fairfield County

Ball and Roller Bearing Company, 20—22 Maple Ave., Danbury, 89001087

Ferris, Samuel, House, E. Putnam and Cary Sts., Greenwich, 89001086

Suburban Club, 6 Suburban Ave./580 Main St., Stamford, 89001090

Hartford County

Hale, Dr. Elizur, House, 3181 Hebron Ave., Glastonbury, 89001088

New Haven County

Orange Center Historic District, Roughly Orange Center Rd. from Orange Cemetery to Nan Dr., Orange, 89001089

Oyster Point Historic District, Roughly bounded by I-95, S. Water St., Howard Ave., Sea St., and Greenwich Ave., New Haven, 89001085

FLORIDA

Broward Count

Young, Joseph Wesley, House, 105 Hollywood Blvd., Hollywood, 89001076

Sarasota County

House at 710 Armada Road South (Venice MPS), 710 Armada Rd. S., Venice, 89001073

Venice Depot (Venice MPS), 303 E. Venice Ave., Venice, 89001072

GEORGIA

Bibb County

Shirley Hills Historic District, Roughly Senate Pl., Parkview Dr., Curry Dr., Briarcliff Rd., Nottingham Dr., and the Ocmulgee River, Macon, 89001093

Bulloch County

Mevil, Dr. John C., House, US 301 S of Register, Register vicinity, 89001105

Cobb County

Washington Avenue Historic District, Roughly bounded by Lawrence St., Rigsby St., Washington Ave., and Haynes St., Marietta, 89001102

Greene County

Jefferson Hall, GA 12, Union Point vicinity, 89001100

MARYLAND

Baltimore Independent City

Seven-Foot Knoll Lighthouse, Pier 5, Inner Harbor, Baltimore (Independent City), 89001096

MISSISSIPPI

Jackson County

Ocean Springs Community Center (Anderson, Walter, MPS), Washington Ave., Ocean Springs, 89001092

Shearwater Historic District (Anderson, Walter, MPS), Roughly bounded by

Shearwater Dr., Inner Harbor, and Bay of Biloxi, Ocean Springs, 89001091

MISSOURI

Washington County

Susan Cave (23WA190), Address Restricted, Potosi vicinity, 89001104

TENNESSEE

Blount County

Alcoa South Plant Office (Blount County MPS), Hall Rd., Alcoa, 89001070
Calderwood Dam (Blount County MPS), Tennessee River at end of Calderwood Rd., Calderwood vicinity, 89001069
Indiana Avenue Historic District (Blount County MPS), Roughly bounded by Goddard St., Court St., Indiana Ave., and Cates St., Maryville, 89001071
Shaddon Mill Site (Blount County MPS), Ninemile Creek at jct. of Big Elm and Trigonia Rds., Maryville vicinity, 89001094

WISCONSIN

Milwaukee County

Church Street Historic District, 1448—1630 Church St. and 7758 W. Menomonee River Pky., Wauwatosa, 89001099

WYOMING

Albany County

Brooklyn Lodge, WY 130, 7.5 mi. W of Centennial, Centennial vicinity, 89001068

[FR Doc. 89–17376 Filed 7–24–89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent to Perform—Interstate Transportation for Certain Nonmembers

Date: July 20, 1989.

The following Notices were filled in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A. (1) Land O'Lakes, Inc.
(2) 4001 Lexington Ave. No., Arden Hills, MN 55126.
(3) 4001 Lexington Avenue No., Arden Hills, MN 55126.
(4) Herb Sorvik, P.O. Box 116, Minneapolis, MN 55440.

B. (1) Norpac Services, Inc.
(2) 4350 S.W. Galewood St., Lake Oswego, OR 97035.
(3) 18053 S.W. Lower Boones Ferry Rd., Durham, OR 97062.
(4) Mel Priday, P.O. Box 2249, Lake Oswego, OR.

Noreta R. McGee,

Secretary.

[FR Doc. 89–17353 Filed 7–24–89; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. The parent corporation and address of its principle office is: W. R. Grace & Co., Grace Plaza, 1114 Avenue of the Americas, New York, NY 10036.

2. Wholly-owned subsidiaries which are participating in the operations and their state(s) of incorporation.

(a) AG Chem International, Inc. (Delaware)
(b) Alewife Boston Ltd. (Massachusetts)
(c) Alewife Land Corporation (Massachusetts)
(d) A–1 Bit & Tool Co., Inc. (Delaware)
(e) American Carry Products Corp. (California)
(f) Antilles Chemical Company (Delaware)
(g) Beckett Golf Club, Inc. (New Jersey)
(h) Berry Gas Company (Oklahoma)
(i) Camillus Acres, Inc. (New York)
(j) Caribe Nitrogen Corporation (Puerto Rico)
(k) Chomerics, Inc. (Delaware)
(l) Chomerics Europe, Inc. (Delaware)
(m) Chomerics Puerto Rico, Inc. (Delaware)
(n) Coalgrace, Inc. (Delaware)
(o) Darex Puerto Rico, Inc. (Delaware)
(p) Daylin-Summit, Inc. (New York)
(q) Devcoa Incorporated (Florida)
(r) Dewey and Almy Company (Massachusetts)
(s) Ecarg, Inc. (New Jersey)
(t) E L Liquidating Corp. (Ohio)
(u) Emerson & Cuming, Inc. (Delaware)
(v) GEC Equipment Co. (California)
(w) GRC Property, Inc. (Delaware)
(x) Gloucester New Communities Company, Inc. (New Jersey)
(y) GPC Marketing Company (Delaware)
(z) GPC Transporter, Inc. (Delaware)
(aa) Grace A–B Inc. (Delaware)
(ab) Grace ASC Corp. (Delaware)
(ac) Grace Communications, Inc. (Delaware)
(ad) Grace Transportation Services, Inc. (Delaware)
(ae) Grace Equipment Co. (Texas)
(af) Grace H–G Inc. (Delaware)
(ag) Grace Industrial Chemicals, Inc. (Delaware)
(ah) Grace (Middle East) Inc. (Delaware)
(ai) Grace Natural Resources Corp. (Delaware)
(aj) Grace Offshore Company (Louisiana)
(ak) Grace PAR Corporation (Delaware)
(al) Grace Petroleum Corporation (Delaware)
(am) Grace Petroleum Libya Incorporated (Delaware)
(an) Grace Technology Marketing Services, Inc. (Delaware)
(ao) Grace Ventures Corp. (Delaware)
(ap) Grace Washington, Inc. (Delaware)
(aq) W. R. Grace Capital Corporation (New York)
(ar) W. R. Grace Credit Corp. (Delaware)
(as) W. R. Grace Land Corporation (New York)
(at) W. R. Grace Properties, Inc. (New York)
(au) W. R. Grace Sales Corp. (Virgin Islands)
(av) W. R. Grace & Co.—Conn. (Connecticut)
(aw) Gracoal, Inc. (Delaware)
(ax) Hanover Square Corporation (Delaware)
(ay) Homco International, Inc. (Delaware)
(az) Monolith Enterprises, Incorporated (District of Columbia)
(ba) Monolith Kitchens, Inc. (Maryland)
(bb) Mount Bundey Mining, Inc. (Delaware)
(bc) Ochoa Fertilizer Co., Inc. (Puerto Rico)
(bd) Offshore Fisheries, Inc. (Massachusetts)
(be) Ridgewood Acceptance Corporation (Delaware)
(bf) Ridgewood Bartow Holdings, Inc. (Delaware)
(bg) Ridgewood Phosphate Corporation (Delaware)
(bh) Seven Hanover Square Corp. (New York)
(bi) 7911 Braygreen, Inc. (Delaware)
(bj) Sourgasco II Corp. (Delaware)
(bk) Southern Oil, Resin & Fiberglass, Inc. (Florida)

(bl) Standard TransPipe Corp. (Delaware)
(bm) Standard TransPipe Inc. (Virginia)
(bn) StanTrans, Inc. (Delaware)
(bo) Support Terminal Services, Inc. (Delaware)
(bp) 1211 Wisconsin, Inc. (Delaware)
(bq) Ven-Tech One, Inc. (Delaware)
(br) Water Street Corporation (Delaware)
(bs) Woodward Chemicals Corporation (Delaware)
(bt) Woolwich Sewer Company, Inc. (New Jersey)
(bu) Woolwich Water Company, Inc. (New Jersey)
(bv) W. R. C. Technical Ventures, Inc. (Delaware)

B. 1. Parent corporation and address of principal office: Kohler Co., 444 Highland Drive, Kohler, Wisconsin 53044.

2. Wholly-owned subsidiary which will participate in the operations and state of incorporation:
Kohler Transport, Inc.—Wisconsin
Sterling Plumbing Group, Inc.—Delaware
Kohler Ltd.—Province of Ontario
Baker, Knapp & Tubbs, Inc.—North Carolina
Kohler Sanimex, S.A. de C.V.—Apodaca, N.L., Mexico
Ann Sacks Tile and Stone, Inc.—Oregon
Ann Sacks Tile and Stone, Ltd.—Province of British Columbia
Kallista, Inc.—California
Kohler Interiors Group, Ltd.—Delaware
Kohler Japan KK—Japan
Compagnie Internationale Des Produits Sanitaires CIPS S.A.—France

C. 1. The name of the parent corporation and address of its principal office is: PepsiCo, Inc., 700 Anderson Hill Road, Purchase, NY 10577.

2. The name and state of incorporation of each of the wholly-owned subsidiaries that will participate in compensated intercorporate hauling are:
1. A&M Food Services, Inc. (NV)
2. Amarillo Pepsi-Cola, Inc. (TX)
3. Atlantic Soft Drink Company, Inc. (SC)
4. Atlantic Soft Drink Company of Knoxville (TN)
5. Belfast Bottling Co. of Reno (NV)
6. Beverage Products Corporation (OK)
7. Beverages, Foods & Services Industries, Inc. (DE)
8. Brainerd-Wadena Beverage Company (MN)
9. Buckeye Pizza Hut, Inc. (OH)
10. Cascade Advertising, Inc. (OR)
11. Chesapeake Bay Pizza Hut, Inc. (MD)
12. Claremont Pepsi-Cola Bottling & Co., Inc. (NH)
13. Contract Beverages, Inc. (MN)
14. Contract Recyclers, Inc. (MN)
15. D&E Foodservice, Inc. (SC)
16. Dr. Pepper Bottling Co. of San Francisco (CA)
17. Edmund Industrial Redevelopment Corporation (MO)
18. El KrAm, Inc. (IA)
19. Elko Bottling Co. (NV)
20. Equity Beverages, Inc. (DE)
21. Erie Bottling Corporation (PA)
22. Export Development Corp. (DE)
23. Fresno H&B, Inc. (CA)
24. Frito-Lay, Inc. (DE)
25. Frito-Lay of Puerto Rico, Inc. (DE)
26. Frito-Lay of the Islands (DE)
27. General Beverages of Oklahoma, Inc. (OK)
28. General Cinema Beverages, Inc. (DE)
29. General Cinema Beverages of Akron, Inc. (DE)
30. General Cinema Beverages of California, Inc. (DE)
31. General Cinema Beverages of Dayton, Inc. (DE)
32. General Cinema Beverages of Ft. Myers, Inc. (DE)
33. General Cinema Beverages of Georgia, Inc. (DE)
34. General Cinema Beverages of Indiana, Inc. (DE)
35. General Cinema Beverages of Miami, Inc. (DE)
36. General Cinema Beverages of North Carolina, Inc. (DE)
37. General Cinema Beverages of North Florida, Inc. (DE)
38. General Cinema Beverages of Ohio, Inc. (DE)
39. General Cinema Beverages of Springfield, Inc. (DE)
40. General Cinema Beverages of Virginia, Inc. (DE)
41. General Cinema Beverages of Washington, D.C., Inc. (DE)
42. General Cinema Beverages of West Virginia, Inc. (DE)
43. General Cinema Beverages of Youngstown, Inc. (DE)
44. Iron Range Bottling Co., Inc. (MN)
45. Jackson David Bottling Co. (CO)
46. Jolly Jorge's, Inc. (MA)
47. Kentucky Fried Chicken, Domestic (DE)
48. Lafayette Beverages, Inc. (NH)
49. Lafayette Distributing Company, Inc. (NH)
50. Lake Michigan Management Co., Inc. (WI)
51. Laurel Group Limited (PA)
52. Mesa Beverage Company (CO)
53. Middleton and Wilson Corporation (MO)
54. Middleton Enterprises, Inc. (MO)
55. Mountaineer Pizza Hut Inc. (WV)
56. National Beverages, Inc. (FL)
57. New Century Beverage Company (CA)
58. One-O-Nine Company (MO)
59. Oriole Pizza Hut, Inc. (MD)
60. Penn Alto Bottling Works, Inc. (PA)
61. PepsiCo Services Corp. (DE)
62. PepsiCo Services International (DE)
63. PepsiCo World Trading Co., Inc. (DE)
64. Pepsi-Cola Alton Bottling, Inc. (IL)
65. Pepsi-Cola Bottling Co. Cumberland, Inc. (MD)
66. Pepsi-Cola Bottling Company of Clarksburg (WA)
67. Pepsi-Cola Bottling Company of Crisp, Inc. (GA)
68. Pepsi-Cola Bottling Company of Danville (VA)
69. Pepsi-Cola Bottling Company of Dodge City, Inc. (MN)
70. Pepsi-Cola Bottling Company of Grand Island (NE)
71. Pepsi-Cola Bottling Company of Johnstown, PA (PA)
72. Pepsi-Cola Bottling Co. of Los Angeles (CA)
73. Pepsi-Cola Bottling Company of Lyons, Inc. (MN)
74. Pepsi-Cola Bottling Co. of Minneapolis & St. Paul (MN)
75. Pepsi-Cola Bottling Co. of Oklahoma City, Inc. (OK)
76. Pepsi-Cola Bottling Company of Omaha, Inc. (NE)
77. Pepsi-Cola Bottling Company of Perry (FL)
78. Pepsi-Cola Bottling Company of Petersburg (VA)
79. Pepsi-Cola Bottling Company of Petersburg (WV)
80. Pepsi-Cola Bottling Company of Reading (PA)
81. Pepsi-Cola Bottling Company of Salt Lake City, Inc. (MN)
82. Pepsi-Cola Bottling Company of St. Louis, Inc. (MO)
83. Pepsi-Cola Bottling Company of St. Mary's, Inc. (PA)
84. Pepsi-Cola Bottling Company of Salinas, Inc. (CA)
85. Pepsi-Cola Bottling Company of Santa Cruz, Inc. (CA)
86. Pepsi-Cola Bottling Company of South Jersey, Inc. (NJ)
87. Pepsi-Cola Bottling Company of Tampa (FL)
88. Pepsi-Cola Bottling Company of Valdosta (GA)
89. Pepsi-Cola Bottling Company of Wichita, Inc. (MN)
90. Pepsi-Cola Bottling Company of Wilmington (DE)
91. Pepsi-Cola Bottling Co. of Louden (NH)
92. Pepsi-Cola Distribution Co. of Delaware Valley (PA)
93. Pepsi-Cola Equipment Corp. (NY)
94. Pepsi-Cola Metropolitan Bottling Co., Inc. (NY)
95. Pepsi-Cola Manufacturing Co., Inc. (DE)
96. Pepsi-Cola San Joaquin Bottling Company (DE)
97. Pepsi-Cola Sweetners, Inc. (DE)

98. Petal, Inc. (DE)
99. Pizza Hut, Inc. (DE)
100. Pizza Hut of America, Inc. (DE)
101. Pizza Hut of Charles County, Inc. (MD)
102. Pizza Hut of Dorchester County, Inc. (MD)
103. Pizza Hut of Duncan Inc. (OK)
104. Pizza Hut of East Wicomice County, Inc. (MD)
105. Pizza Hut of Garrett County, Inc. (MD)
106. Pizza Hut of Las Vegas (NV)
107. Pizza Hut of Okemah, Inc. (OK)
108. Pizza Hut of Okmulgee, Inc. (OK)
109. Pizza Hut of Oregon, Inc. (OR)
110. Pizza Hut of San Diego, Inc. (CA)
111. Pizza Hut of St. Louis, Inc. (MO)
112. Pizza Hut of St. Mary's County, Inc. (MD)
113. Pizza Hut of Talbot County, Inc. (MD)
114. Pizza Hut of Titusville, Inc. (FL)
115. Pizza Hut of Utah, Inc. (UT)
116. Pizza Hut of West, Inc. (CA)
117. Pizza Hut of Wicomice County, Inc. (MD)
118. Pizza Hut of Zion, Inc. (IL)
119. Pizza Hut of the Northwest, Inc. (MN)
120. Pizza-2-U (NM)
121. Potomac Pizza Hut, Inc. (MD)
122. Pub Beverages, Inc. (CA)
123. Rice Bottling Enterprises, Inc. (TN)
124. Rogers Beverages, Inc. (NH)
125. Sabritas S.A. de C.V. (DE)
126. Saxton Bottling Co., Inc. (PA)
127. Smartfoods, Inc. (MA)
128. Single Tree Corporation (MO)
129. Southern Pizza Huts, Inc. (LA)
130. Southwest Beverage Corporation (DE)
131. Supreme Pizza, Inc. (MO)
132. Taco Bell Corp. (CA)
133. Temanti S.A. de C.V. (MX)
134. TJF Beverages, Inc. (OK)
135. UniBev, Inc. (PA)
136. Waycross Pepsi-Cola Bottling Company (GA)
137. Wilchart, Ltd. (DE)
138. Willamette Beverage Co. (OR)

Noreta R. McGee,

Secretary.

[FR Doc. 89-17354 Filed 7-24-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89-16]

Ramesh Kumar Gupta, R.Ph. d/b/a Bloomfield Professional Center Pharmacy, Hearing

Notice is hereby given that on March 2, 1989, the Drug Enforcement Administration, Department of Justice, issued to Ramesh Kumar Gupta, R.Ph., d/b/a Bloomfield Professional Center Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, September 12, 1989, commencing at 11:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroon, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17290 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-114]

Larry L. Kompus, M.D., Orchard Lake, MI, Hearing

Notice is hereby given that on November 10, 1988, the Drug Enforcement Administration, Department of Justice, issued to Larry L. Kompus, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 15, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroon, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17291 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-117]

Ernesto Y. Medina, M.D., Berrien Springs, MI, Hearing

Notice is hereby given that on November 9, 1988, the Drug Enforcement Administration, Department of Justice, issued to Ernesto Y. Medina, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AM6195211, and any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, August 17, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroon, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17292 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-119]

Daniel L. Quion, M.D., Coloma, MI, Hearing

Notice is hereby given that on November 9, 1988, the Drug Enforcement Administration, Department of Justice, issued to Daniel L. Quion, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AQ3147647, and any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, August 17, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroom, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17293 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-118]

Rodolfo L. Quion, M.D., Coloma, MI, Hearing

Notice is hereby given that on November 9, 1988, the Drug Enforcement Administration, Department of Justice, issued to Rodolfo L. Quion, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate

of Registration, AQ6855259, and any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, August 17, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroom, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17294 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22,578]

The Florsheim Shoe Co., Paducah, KY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 14, 1989 applicable to all workers engaged in the production of men's dress shoes at The Florsheim Shoe Company, Paducah, Kentucky. The Certification was published in the **Federal Register** on May 23, 1989 (54 FR 22382).

Based on new information from the company, additional workers were separated from The Florsheim Shoe Company in Paducah, Kentucky a few weeks prior to the January 17, 1989 impact date. The notice, therefore is amended by changing the impact date to December 1, 1988.

The amended notice applicable to TA-W-22,578 is issued as follows:

All workers engaged in the production of men's dress shoes at The Florsheim Shoe Company, Paducah, Kentucky who became totally or partially separated from employment on or after December 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17347 Filed 7-24-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,735]

Iberia Petroleum Co., Houston, Texas; Affirmative Determination Regarding Application for Reconsideration

On June 19, 1989, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of Iberia Petroleum Company, Houston, Texas. The negative determination was issued on May 26, 1989 and published in the **Federal Register** on June 23, 1989 (54 FR 26444).

The company submitted additional information showing that a substantial amount of its business was devoted to exploration for for oil and gas in 1988.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 14th day of July 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-17348 Filed 07-24-89; 8:45 am]

BILLING CODE 4510-30-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Announcement of Commission Meeting and Kentucky Public Hearing

Background

The Lower Mississippi Delta Development Commission was created by Pub. L. 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces a meeting of the Commission and the Kentucky public hearing.

Meeting

Time: 8:00 a.m., August 10, 1989
Place: J.R's Executive Inn, 1 Executive Boulevard Paducah, Kentucky 42001
Status: Open Meeting

Public Hearing

Time: 10:00 a.m., August 10, 1989
Place: J.R's Executive Inn, 1 Executive Boulevard Paducah, Kentucky
Status: Public oral and written testimony encouraged
Contract: Ann Sartwell, Telephone (901) 753-1400

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-17319 Filed 7-24-89; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before September 8, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National

Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Defense Nuclear Agency (N1–374–89–28). Background, scheduling, and coordinating material for Congressional Hearings.

2. Defense Nuclear Agency (N1–374–89–32). Management Improvement project records and associated feasibility studies.

3. Defense Nuclear Agency (N1–374–89–38). Facilitative records relating to emergency planning.

4. Defense Nuclear Agency (N1–374–89–39). Routine printing, binding, and duplication files.

5. Defense Nuclear Agency (N1–374–89–40). Routine administrative files relating to the management of civilian and military manpower.

6. Defense Nuclear Agency (N1–374–89–41). Notes, preliminary drafts, publications, directives, and similar material used as source material for the annual command histories. (Command histories are retained as permanent records.)

7. Defense Nuclear Agency (N1–374–89–42). Routine administrative records relating to loan accounts.

8. Department of Labor, Bureau of Labor Statistics (N1–257–87–2). Comprehensive schedule for the Office of Safety and Health Statistics.

9. Department of the Treasury, Office of Foreign Assets Control (N1–265–89–1). Blocked Chinese Assets report forms, completed in 1950 (TFR 603).

10. U.S. District Court, Anchorage (N1–21–89–2). Chattel mortgage and conditional sale contract files.

Dated: July 18, 1989.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 89–17345 Filed 7–24–89; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1055 "Telecommunications: Interoperability Requirements for Meteor Burst Communications."

DATE: Comments are due on or before October 23, 1989.

ADDRESS: Send comments to the National Communications System, Office of Technology and Standards Washington, DC 20305–2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, telephone (202) 692–2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the July 11, 1989 draft of FED–STD 1055 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305–2010.

Dennis Bodson,

Assistant Manager NCS Office of Technology & Standards.

[FR Doc. 89–17316 Filed 7–24–89; 8:45 am]

BILLING CODE 3810–DG–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* Survey of Source and Device Users.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* The information will be collected in a one-time survey.

5. *Who will be required or asked to report:* Certain persons authorized under the general license in 10 CFR Part 31 to possess and use sources and devices containing radioactive material, and certain holders of specific licenses for the possession and use of sources and devices containing radioactive material.

6. *An estimate of the number of responses:* 4,000 annually.

7. *An estimate of the total number of hours needed to complete the requirement or request:* Approximately 0.5 hours per mail or telephone response or 2 hours per site visit, for an average

of 1.1 hours per response. The total industry burden is estimated to be 4,400 hours per year.

8. *An indication of whether section 3504(h), Pub. L. 96–511 applies:* Not applicable.

9. *Abstract:* NRC will contact, by mail or telephone interview or site visit, persons holding general licenses under 10 CFR Part 31 to verify what devices are in their possession, to verify that they are complying with requirements of NRC regulations, and to determine the utility of a formalized mail survey program. NRC will also conduct a survey of certain holders of specific licenses for possession and use of radioactive material to determine their source/device inventory.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–0124), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 17th day of July 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–17365 Filed 7–24–89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to the OMB for review the following for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision

2. *The title of the information collection:* 10 CFR Parts 30, 40, 50, 60, 70, 72 and 150 "Preserving the Free Flow of Information to the Commission," Proposed Rule

3. *The form number if applicable:* Not applicable

4. *How often the collection is required:* One Time

5. *Who will be required or asked to report:* Commission licensees and license applicants

6. *An estimate of the number of responses:* 8,382

7. *An estimate of the total number of hours needed to complete the requirement or request:* 18,832 annually, 2.2 hours per recordkeeper

8. *An indication of whether section 3504(h), Pub. L. 96–511 applies:* Not applicable.

9. *Abstract:* The Nuclear Regulatory Commission is proposing a revision to its rules governing the conduct of all Commission licensees and license applicants. The proposed rule would require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under Section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential safety violations. The proposed rule would require licensees and license applicants to establish procedures to ensure that their contractors and subcontractors are informed of the prohibition, that they are notified of any complaints of discrimination by an employee of a contractor or subcontractor for providing such information related to work performed for the licensee or license applicant, and to require review by the licensee or license applicant of any settlement agreements related to any employee complaints of such discrimination by a contractor or subcontractor related to work performed for the licensee or license applicant. The establishment of these procedures constitutes the creation of a one-time record.

ADDRESSES: Copies of the submittals may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer: Nicholas B. Garcia, Paperwork Reduction Project (3150–0017), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 19th day of July 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–17366 Filed 7–24–89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 (U.S.C. Chapter 35).

1. *Type of submission—new, revision, or extension:* Extension

2. *The title of the information collection:* Simulation Facility Certification

3. *The form number if applicable:* NRC Form 474

4. *How often the collection is required:* One time requirement

5. *Who will be required or asked to report:* All power reactor licensees and applicants for an operating license.

6. *An estimate of the number of responses:* 23 annually

7. *An estimate of the total number of hours needed to complete the requirement or request:* 2760 annually, approximately 120 hours per response.

8. Section 3504(h), Pub. L. 96–511 does not apply.

9. *Abstract:* Licensed power facilities which propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing operating tests are to submit NRC Form 474.

ADDRESSEES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Comments and questions can be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–0138), Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

NRC Clearance Officer is Brenda J. Shelton, (3CI) 492–8132.

Dated at Bethesda, Maryland, this 17th day of July 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–17367 Filed 7–24–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27044; File Nos. SR–DTC–88–20, SR–MCC–88–10, SR–MSTC–88–07, SR–NSCC–88–09, SR–OCC–89–02, SR–Philadep–89–01, and SR–SCCP–89–01]

Self-Regulatory Organizations; Depository Trust Co. et al

The following seven clearing agencies have submitted uniform proposed rule changes to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"):[1] Midwest Clearing Corporation ("MCC") on October 27, 1988; Midwest Securities Trust Company ("MSTC") on October 27, 1988; National Securities Clearing Corporation ("NSCC") on November 8, 1988; Depository Trust Company ("DTC") on December 8, 1988; Options Clearing Corporation ("OCC") on January 24, 1989; Philadelphia Depository Trust Company ("Philadep") on January 17, 1989; and Philadelphia Stock Clearing Corporation ("SCCP") on January 17, 1989.

The proposed rule changes, among other things, would: (1) Create the Securities Clearing Group ("SCG"); (2) authorize each of the clearing agencies to participate in SCG; and (3) confirm each clearing agency's authority to provide to other SCG members confidential information concerning the financial and operating condition of clearing agency participants that also are participants in other SCG member clearing agencies. Each SCG member is a signatory to a nine-page SCG Agreement, or contract.[2]

Notice of the proposed rule changes appeared in the **Federal Register** on several occasions to solicit public comment from interested persons.[3] The Commission received five identical comment letters from the Board of Trade Clearing Corporation ("BOTCC"), expressing essentially two concerns about the proposed SCG Agreement.[4] On March 31, 1989, the Commission received from NSCC a letter responding to the BOTCC comment letter.[5] This order approves the proposed rule changes.

I. Description

SCG would be an organization of clearing agencies.[6] Membership in SCG would be open to any clearing agency self-regulatory organization ("SRO")[7] that is registered with the Commission under Section 17A of the Act.[8] While the initial membership of SCG would consist of the organization's seven founding members (*i.e.*, DTC, MCC, MSTC, NSCC, OCC, Philadep, and SCCP), other registered clearing agencies,[9] or newly-registered clearing agencies, would become eligible for SCG membership.[10]

The governance of SCG would consist of one Principal Representative appointed from each member clearing agency. The Principal Representatives would elect a Chairman from among themselves by majority vote. The Chairman would serve a term of one year effective immediately upon election. At the end of that term, a successor Chairman would be elected in like manner. Each Principal Representative would be authorized to select an Alternate from the staff of its clearing agency. The Chairman would be authorized, among other things, to call meetings of the SCG and to appoint subgroups to study issues within the scope of SCG's interest. Each Principal Representative (or Alternate) would have one vote on each matter coming before the SCG, and no action could be taken at, or as a result of, an SCG meeting without the affirmative vote of all Principal Representatives (or their Alternates).[11]

Under the SCG Agreement, SCG meetings normally would be called at the discretion of the Chairman at sites selected by the Chairman. Alternatively, meetings could be called at the request of a majority of the Principal Representatives. SCG contemplates that meetings would take place not less frequently than quarterly.[12]

The purposes of SCG would include fostering cooperation among members toward the goals set forth in the SCG Agreement, which include: (1) Identifying facilities and systems that could serve as a central data base for FOCUS reports and related systems that would contain data on participants, which later would be accessible to any SCG member; [13] (2) identifying potential improvements and additions to FOCUS reports in order to facilitate clearing agency monitoring of the financial and operating condition of participants; (3) resolving particular legal issues involving clearing agencies; [14] (4)

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] For the full text of the SCG Agreement, *see* Securities Exchange Act Release No. 23600 (November 21, 1988), 53 FR 48353.

[3] Securities Exchange Act Release Nos. 26300 (November 21, 1988), 53 FR 48353 [File No. SR–MCC–88–10]; 26301 (November 21, 1988), 53 FR 48352 [SR–MSTC–88–07]; 26327 (November 30, 1088), 53 FR 49261 [SR–NSCC–88–09]; 26397 (December 27, 1988), 54 FR 78 [SR–DTC–89–02]; 26397 (January 3, 1989), 54 FR 6347 [SR–OCC–88–20]; 26541 (January 13, 1989), 54 FR 7318 [SR–Philadep–89–01]; and 26540 (February 13, 1989), 54 FR 7319 [SR–SCCP–89–01].

[4] *See* letter from Roger D. Rutz, President, BOTCC, to Jonathan G. Katz, Secretary, SEC, dated January 6, 1989. This first BOTCC comment letter addressed the NSCC's rule filing.

For the purposes of this combined order, the Commission is combining its treatment of BOTCC's five identical comment letters, dated and referencing clearing agencies as follows: January 6, 1989 (NSCC), January 6, 1989 (MSTC), January 17, 1989 (DTC), March 8, 1989 (SCCP), and March 8, 1989 (Philadep).

[5] *See* letter from Robert J. Woldow, Executive Vice President and General Counsel, NSCC, to Jonathan Katz, Secretary, SEC, dated March 27, 1989.

[6] The term "clearing agency" is defined by the Act to include both clearing agencies and securities depositories. *See* section 3(a)(23) of the Act.

[7] For definition of "SRO," *see* section 3(a)(26) of the Act.

[8] Section 17A(b)(1) of the Act, in effect, makes it unlawful for a clearing agency to operate unless registered with the Commission.

[9] At this time, seven registered clearing agencies are not signatories to the SCG Agreement: (1) Boston Stock Exchange Clearing Corporation, (2) Delta Government Options Corporation, (3) Government Securities Clearing Corporation, (4) Intermarket Clearing Corporation, (5) International Securities Clearing Corporation, (6) MBS Clearing Corporation, and (7) Participant Trust Company.

[10] Membership would not be automatic. Rather, membership in SCG would be voluntary and would require, among other things, execution of the SCG Agreement.

[11] *See* SCG Agreement, Sect. 1. Under this provision, SCG votes would not simply require unanimity of a quorum but unanimity of all Principal Representatives (or their Alternates). *See id.* at Sect. 1(D).

[12] *See* SCG Agreement, Sect. 1(B).

[13] The term "FOCUS report" is an acronym for Financial and Operational Combined Uniform Single report. Section 17(a) of the Act and Rule 17a–5 thereunder require the periodic filing of FOCUS reports by all broker-dealers.

[14] The legal issues include: (1) Cross liens between two or more clearing agencies of participant guarantee deposits where a participant is in default to one or more clearing agencies; (2) application of settlement credits of a participant in two or more clearing agencies where the participant is in default at one or more clearing agencies; (3) application of a participant's excess margin balances at two or more clearing agencies where the participant is in default at one or more clearing agencies; (4) the netting of a participant's debit and credit obligations at two or more clearing agencies when the participant is not in default; (5) the routine sharing of net settlement debit and settlement credit information among SCG members; and (6) the exchange of a participant's securities between two or more clearing agencies to secure settlement obligations in event of a temporary cash imbalance of the participant. *See* SCG Agreement, Sect. 3.

developing standard notification forms for SCG members with which to notify other SCG members when a new participant is added and when an existing participant is placed on surveillance due to questions about its financial or operational ability; (5) developing means to increase current levels of cooperation between clearing agencies and marketplace regulators, including the SEC; and (6) other purposes as identified by SCG members in the future.[15]

Further, each SCG member would agree to work with the others to develop procedures that would identify financial and operational conditions of any participant of one SCG member that might produce risks to one or more other SCG members.[16] These procedures would include mechanisms for sharing by SCG members the exact information underlying such risks.

The SCG Agreement provides that each SCG member would agree that, concerning "confidentiality," any clearance, settlement, financial, and operational information received under the SCG Agreement would be used exclusively for a clearing agency's legal, regulatory, or compliance purposes.[17] Moreover, each SCG member would agree to deliver, upon request, information about a participant to another SCG member provided such participant is also a participant of the SCG member requesting the information.[18] The SEC, other appropriate regulatory agencies, and the courts likewise would have access to such information. Non-SCG SROs, such as the securities exchanges and the National Association of Securities Dealers ("NASD"), also would have access provided they agreed to abide by the Agreement's confidentiality provisions.[19]

II. Rationale for the Proposals

The clearing agencies state that section 17A of the Act provides, among other things, that: (1) Congress has determined that a national system involving the linking of clearance and settlement facilities and the development of uniform standards and procedures would reduce unnecessary costs and increase protections to investors and to persons facilitating transactions on behalf of investors, and (2) the rules of a clearing agency should be designed to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in clearance and settlement.

The clearing agencies state that the goals of their proposals, in accordance with the Act, are to promote coordinated action among clearing agencies and to identify, address, and minimize the risks and problems common to more than one clearing agency. The clearing agencies further state that the key methods of achieving these goals will be: (1) The sharing of appropriate financial, operational, and clearing information with other clearing agencies in an atmosphere of cooperation; and (2) the development of certain uniform procedures for use among clearing agencies.

The clearing agencies emphasize that the SCG and its governing Agreement are consistent with the letter and the spirit of the Act, including the Act's concept of a national system of clearance and settlement and its concept of fostering cooperation and coordination among persons engaged in the clearance and settlement of securities transactions.

III. Comment Letter

A. The BOTCC Letter

As stated above, the Commission received a comment letter on the proposals from BOTCC, the affiliated clearing corporation of the Chicago Board of Trade.[20] The BOTCC comment letter, in essence, raised two issues. First, it recommended that the proposed SCG Agreement, in its Section 2 (*i.e.*, the provision captioned "Confidentiality"), should provide that nothing in the Agreement would preclude an SCG member from furnishing financial or operational information concerning its participants to a commodities exchange or its affiliated clearing organizations. The letter added that any such information would be subject to the confidentiality provisions of the SCG Agreement.

Secondly, BOTCC's comment letter recommended that section 2(vi) of the proposed SCG Agreement, which would permit the sharing of information with a subsidiary of an SCG member whose application was then pending with the SEC, be amended and either: (1) Limited to a particular "named entity," or (2) extended to include all "new entities."[21] BOTCC argued that this SCG provision seemed designed solely to address a particular entity and, if so, that entity should be named. Alternatively, BOTCC argued that if subsidiaries of SCG members with applications pending before the Commission are to be included, the Agreement should provide for the "automatic admission of new entities" into SCG.

B. The NSCC's Response

In response to BOTCC, NSCC noted that the proposed SCG Agreement, as an agreement among clearing agencies, would not expand or restrict the rights of any registered clearing agency to share data with a commodities clearing organization, which is a matter for each clearing agency's own rules.[22] NSCC emphasized that it is a clearing agency's rules and agreements with its members, not the proposed SCG Agreement, that would authorize or prohibit the sharing with commodities clearing organizations of any information regarding the financial and operational capacity of dual participants. Accordingly, NSCC stated that even if SCG were to adopt BOTCC's proposed amendment, it

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[15] *See* SCG Agreement, Sect. 3.

[16] The term "participant" is defined in Section 3(a)(24) of the Act.

[17] The SCG Agreement would bar any SCG member that receives information under the SCG Agreement from providing, without the written consent of the delivering member, such information to its non-legal, non-regulatory, or noncompliance departments. The main purpose of this prohibition is to avoid confidential information about participants being used by a clearing agency for its own marketing purposes. *See* SCG Agreement, Sect. 2.

Nothing in the SCG Agreement, however, would bar any SCG member from furnishing information concerning a participant to: (1) Appropriate governmental authorities, (2) other SROs as necessary to conduct an investigation or disciplinary proceeding, and (3) a subsidiary of an SCG member whose application for registration is pending.

[18] The term "participant" for this purpose would be construed to include: (1) A current participant as defined in section 3(a)(24) of the Act, (2) an applicant for participation, (3) a subsidiary or affiliate of a participant, and (4) a subsidiary or affiliate of an applicant for participation.

Under the SCG Agreement, an SCG member would be expected to provide participant information to another SCG member in response to a "reasonable request." This would include such information about a participant that, from the viewpoint of the SCG member requested to provide the information, is: (1) Within its possession, (2) reasonably accessible, and (3) not unduly burdensome in terms of the request's size.

[19] In those circumstances where a member participates in more than one self-regulatory organization, the SRO's may agree to allocate to one SRO examination responsibilities. *See* Rule 17d-2 under the Act, 17 CFR 240.17d-2 (1989). The designated examining authority for broker-dealer members of a clearing agency generally will be an exchange or the NASD.

[20] *See, supra,* note 4.

[21] The comment letter suggests that, in any case, if a clearing entity's application were only pending, it would have no information to contribute and would not be a meaningful contributor to the process.

[22] Letter from Robert J. Woldow, Executive Vice President and General Counsel, NSCC, to Jonathan Katz, Secretary, SEC, dated March 27, 1989. According to the letter, Mr. Woldow also currently chairs the proposed SCG.

would have no substantive effect on the SCG Agreement.

NSCC also noted that the status of certain new clearing organizations has changed since the SCG Agreement was first drafted,[23] and that the SCG, from a policy viewpoint, could not logically direct its procedures to a single named clearing organization.[24] Additionally, NSCC disagreed with BOTCC's proposal of "automatic admission" to SCG for each new clearing entity, stating that the parties to the SCG Agreement have had years of mutual experience through working together and that they possess the necessary expertise and operational capacity to support the sharing arrangement as set forth in the Agreement.

IV. Discussion

The Commission believes that the proposals are consistent with the Act. The proposals would: (1) Create the SCG, an organization of clearing agencies; and (2) approve the SCG Agreement as rules of the affected clearing agencies.[25]

The Commission notes that section 17A(a)(1)(D) of the Act expressly encourages the linking of clearance and settlement facilities and the development of uniform standards and procedures. Section 17A(a)(2) of the Act, moreover, directs the Commission, having due regard for the public interest, to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Furthermore, section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

A. The Status of Clearing Agencies and the SCG Proposals

The Commission believes that a nexus exists among the SCG-SROs. These clearing agencies provide clearance, settlement, and safekeeping services for financial intermediaries that participate in, among other things, corporate equity securities markets, including the National Market System contemplated in Section 11A of the Act. The nexus among SCG-SROs includes: (1) Many common participants,[26] (2) interfaces through which clearing agencies offer access to participants in or services offered by other clearing agencies, (3) shared operational and financial exposure, and (4) common regulatory responsibilities.[27] The development of a formal structure to further common regulatory, operational, and member monitoring obligations will further the stated goals of the National Clearance and Settlement System.

Although clearing agencies compete in offering quality clearance, settlement, and safekeeping services, the SCG-SROs comprise the core components of an integrated national clearance and system that Congress envisioned in its enactment of section 17A, and continuously deliver or receive instructions, securities or funds among themselves.[28] Essential to understanding the nexus among the SCG–SROs is a brief review of the services SCG–SROs offer and the interfaces that connect these organizations.

NSCC, MCC, and SCCP, among other things, provide trade comparison, clearance, and settlement services for brokerdealer members executing trades in corporate and municipal securities.[29] Each of these clearing agencies operates a continuous net settlement system ("CNS"),[30] which permits a member to net all deliver and receive obligations in each security, which can be settled with one electronic book-entry movement between the member and its clearing agency on the books of an affiliated depository.[31] Corresponding money payment obligations in all securities issues are settled on a net basis at the end of the day in clearing house funds. Each of these clearing agencies also provides a mechanism for transfer of customer accounts among clearing members, known as the Automated Customer Accounts Transfer System ("ACATS").[32] Each clearing agency also maintains interfaces with each other to permit clearing members to settle trades with or transfer customer accounts to members of other clearing agencies.[33] Thus, these clearing agencies communicate with each other daily on behalf of their members and daily settle payment and securities delivery obligations.

The three depositories, DTC, MSTC, and Philadep, offer various depository services to member banks and broker-dealers.

These services include safekeeping of members' securities, in a fungible bulk;[34] same-day credit for deposit of negotiable securities; facilities for distribution of securities in primary offerings, and facilities for delivery of securities between member banks, brokers, clearing corporations; and

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[23] The Commission notes that the first draft of the SCG Agreement was circulated among prospective SCG members under a cover letter dated June 10, 1988. After revisions, a final draft was executed by the seven signatories on October 19, 1988.

[24] The NSCC letter notes that: (1) Government Securities Clearing Corporation, a wholly-owned NSCC subsidiary when the SCG Agreement was first drafted, has become registered; (2) International Securities Clearing Corporation, a wholly-owned NSCC operating subsidiary, when the Agreement was first drafted, has become temporarily registered; and (3) Participants Trust Company, a spin-off of MBS Clearing Corporation, has become temporarily registered.

[25] The term "SRO rules" is defined in section 3(a)(28) of the Act.

[26] Based on data recently compiled by NSCC, of 848 broker-dealers that are clearing agency participants, 541 are participants at two or more clearing agencies, and 221 are participants at three or more clearing agencies. The clearing agencies that were subjects of the study were: DTC, OCC, MCC, MSTC, NSCC, Philadep, SCCP, and MBS Clearing Corporation.

[27] Section 19(g)(1)(C) of the Act requires each of the SCG SROs, as clearing agencies, to enforce member compliance with their rules. Pursuant to section 17(d) of the Act, Rule 17d–2 thereunder authorizes SROs to file a plan with the Commission that allocates examinations for compliance and enforcement to a designated examining authority ("DEA"). Although not involving DEAs, the Commission believes the proposed rule changes are consistent with the legislative purposes of section 17(d). *See* Senate Comm. on Banking, Housing and Urban Affairs, *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess. 121–122 (1975).

[28] *See* Order Granting Registration to NSCC, Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916.

[29] *See* Division of Market Regulation, SEC, *The October 1987 Market Break*, 10–1 to 10–12 (February 1988) ("*Division Report*").

[30] For further discussion of CNS, *see id.* at 10–2 to 10–5.

[31] DTC is the designated depository for settlement of securities delivery obligations between NSCC and NSCC members. Similarly, MSTC and Philadep are the designated depositories for MCC and SCCP, respectively.

[32] *See* Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274 [File No. SR–NSCC–85–07]. *See also* New York Stock Exchange Rule 412.

[33] The Regional Interface Organization ("RIO") offers a participant the option of clearing and settling trades at the clearing facility of its choice, regardless of the market of execution. To effect delivery, one depository receives instructions from its affiliated clearing corporation or from an interfacing depository on behalf of its clearing corporation, and the depository makes the necessary book-entry movements. These movements enable clearing corporations to settle, by book-entry, trades between their respective participants. *See* Securities Exchange Act Release No. 20461 (December 7, 1983), 48 FR 55654 [File No. SR–DTC–77–10]. *See also* Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916.

[34] The term "fungible bulk" refers to the fact that security certificates of the same issue are interchangeable and that units of a depository-eligible security typically are held in large volume in the custody of a depository. This permits the electronic book-entry transfer of units of such a security issue, units which nominally are held by a depository's participant broker-dealers. Such transfers occur with no physical movement of certificates and no change in the number of units of the security held by the depository. *See, e.g.*, D. Scott, *Wall Street Words* 150 (1988); D. Weiss, *After the Trade Is Made* 314 (1986).

through interfaces with other depositories, facilities for delivery of securities to banks, broker-dealers and clearing corporations that are members of other securities depositories. DTC, MSTC, and Philadep also offer communication and settlement services for institutional trades through the National Institutional Delivery System ("NIDS"). Through NIDS, brokerdealers can confirm to institutional money managers the terms of trades in corporate and municipal securities executed on a securities exchange or over-the-counter, and institutional money managers can affirm those trades,[35] thereby setting the stage for book-entry settlement of those trades on settlement date (usually five business days after the trade date).[36] In 1988, more than 16.7 million confirmations were processed through NIDS and more than $1.3 trillion in NIDS trades were settled by book-entry. Exchange and NASD rules require brokerdealers to use NIDS facilities to confirm, affirm, and settle most delivery-against-payment trades in corporate [37] and municipal securities.[38] Accordingly, each day DTC, MSTC, and Philadep communicate member trade and delivery data, and settle on a net basis, inter-depository securities movements and payments.

OCC issues and clears, on behalf of its members, all exchange traded options on equity securities, index participation, stock-index options, and a variety of other nonequity securities options. OCC routinely interacts with NSCC, MCC, and SCCP, which are OCC's primary correspondent clearing corporations,[39] for settlement of equity options exercises on the fifth business day after exercise. OCC also participates in ACATS thereby permitting the transfer of customer accounts including option positions.[40] DTC and MSTC hold on deposit "valued securities" for OCC members' margin accounts,[41] and covered option contracts often are written against stock on deposit at a DTC, MSTC, or Philadep member bank, which may issue an "escrow receipt" that would guarantee the delivery of stock if an assignment notice were given to the call writer.[42] Moreover, while OCC currently is using a physical delivery facilitator for delivery of equity index participations, OCC is working with NSCC to develop an electronic delivery system.[43]

Many broker-dealer and some banks participate in more than one clearing agency. As noted above, over 500 broker-dealers are members of two or more clearing agencies and that over 200 are members of three or more clearing agencies.[44]

Securities price volatility, coupled with the five-day settlement cycle for settlement in corporate securities (including exercises of equity options) expose clearing members to financial loss due to proprietary and customers' trading activity.[45] This risk to clearing members ultimately falls on the clearing agencies, which are subject to loss if their members fail. This exposure was highlighted during the October 1987 Market Break.

Clearing agencies ceased to act for three clearing members during the week of October 19, 1987. DTC, NSCC, and MBS Clearing Corporation ("MBSCC") ceased to act for Metropolitan Securities ("Metropolitan"). DTC, NSCC, and OCC ceased to act for H.B. Shaine & Co. ("Shaine"). DTC and NSCC ceased to act for American Investors Group ("AIG").

As explained in greater detail in the *Division Report*.[46] NSCC liquidated approximately 166 security positions held for Metropolitan with a total contract value of more than $58 million, at a loss to NSCC of approximately $395,000, which NSCC funded from its retained earnings. DTC and MBSCC closed out Metropolitan's accounts and returned to Metropolitan an overage of approximately $1.1 million. NSCC and OCC liquidated

Shaine's positions: NSCC's liquidation of more than 170 security positions generated a profit of approximately $160,000 which NSCC returned to Shaine's trustee. OCC's liquidation of Shaine's positions generated a loss of approximately $8 million, and OCC assessed its members, *pro rata*, approximately $8 million to fund OCC's payment obligations in closing out Shaine's positions. Neither NSCC nor DTC suffered losses in closing out AIG's accounts.¶

The interdependence of clearing agencies highlights the need for effective communication among clearing agencies.[47] Improved communication has been a Commission and clearing agency priority for many years.

In 1984, following the SEC-sponsored Securities Processing Roundtable,[48] various SROs established the Monitoring Coordination Group ("MCG").[49] MCG, in turn, established procedures for communications among clearing corporations, depositories, and other self-regulatory DEAs.[50] These procedures apply whenever a common participant's financial condition is deemed to threaten the financial or operational condition of clearing members, clearing agencies, or marketplaces.

During the Market Break, the clearing agencies' monitoring and communications networks generally enabled them to spot potential member defaults in time to minimize or eliminate losses to themselves.[51] Thus, the

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[35] Affirmation is the second step in the process of settling a typical institutional securities transaction where the parties have agreed that the broker will deliver securities (or funds) to the institution' custodian bank against payment (or delivery of securities). As indicated above, the first step in settling such a trade entails delivery of the broker's confirmation of the terms of the trade to the money manager (NIDS provides copies to the money manager and the custodian bank). The "affirmation" is the money manager's agreement that the confirmation correctly reflects the terms of the trade and, in NIDS, can constitute the necessary authorization to the custodian bank to release funds or securities. If the money manager affirms the trade by the third day after trade date, settlement generally occurs automatically by book-entry at the depository by the fifth day after trade date. See Division Report, at 10–10 to 10–12.

[36] *See, e.g.*, Securities Exchange Act Release No. 19029 (September 1, 1982), 47 FR 39775.

[37] *See, e.g.*, NYSE Rule 387; Securities Exchange Act Release Nos. 24213 (March 13, 1987), 52 FR 9001; 25102 (November 13, 1987), 52 FR 44506.

[38] *See* Municipal Securities Rulemaking Board, Rule G–12.

[39] For definition of "correspondent clearing corporation," *see* OCC By-Laws, Art. I, Sect. 1(bbb).

[40] *See* Securities Exchange Act Release No. 24133 (Feb. 24, 1987), 52 FR 6417.

[41] *See* OCC Rule 604(d), Securities Exchange Act Release Nos. 12060 (January 28, 1976), 41 FR 5159; 22887 (February 10, 1986), 51 FR 5823.

[42] *See* Securities Exchange Release No. 18844 (June 25, 1982), 47 FR 29046; L. McMillan, *Options as a Strategic Investment* 36–37, 457 (1980). Telephone conversation between Daniel Kraus, Counsel, OCC, Michael Cahill, Assistant Vice President, OCC, and Thomas C. Etter, Attorney, SEC (May 3, 1989)

[43] Securities Exchange Act Release No. 26713 (April 11, 1989), 54 FR 15575. Telephone conversation between James C. Yong, Counsel, OCC and Thomas C. Etter, Attorney, SEC (July 13, 1989).

[44] *See, supra, note 26.*

[45] *See Division Report* at 10–25 to 10–26.

[46] *See id.* at 10–16 to 10–18, 10–44 to 10–45.

[47] *See Division Report* at 10–19 to 10–23. Where a brokerdealer is a member of two or more clearing agencies, absent established communications channels, one clearing agency may be unaware of the broker-dealer's debt positions with the other clearing agencies, thereby exposing itself to unknown financial risk.

[48] *See Report of the Division of Market Regulation 1984 Securities Processing Roundtable* (May 31, 1984).

[49] MCG members include: DTC, MCC, MSTC, NSCC, OCC, SCCP, Philadep, American Stock Exchange, Boston Stock Exchange, Chicago Board Options Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Philadelphia Stock Exchange, and Pacific Stock Exchange.

[50] *See, supra,* note 27.

[51] *See Division Report* at 10–21.

communication channels of MCG proved useful in protecting MCG members as well as the marketplace in general.[52] Although MCG provided the basis for effective communication during the Market Break, the Commission believes that a need exists for a more structured form of cooperation and problem solving among clearing agencies. The Commission believes that, at the present time, this need can best be filled by SCG.

B. The BOTCC Comment Letter

Despite these benefits, BOTCC argues that the Agreement should be amended to state that it does not preclude sharing information with commodities organizations. NSCC counters that such an amendment is both unnecessary and ineffective because the rules of the SCG members would control such a provision in any event. That is to say, a mere statement in the SCG Agreement that nothing in the Agreement bars SCG members from sharing information with commodities organizations, in itself, would provide no affirmative legal authority, much less a mandate, for such information sharing.[53] Moreover, the Commission notes that actions by SCG at its last meeting show that its members are willing to share information with commodities clearing organizations where appropriate.[54] The Commission agrees with NSCC's views and believes that approval of this rule change is consistent with the Act.

To the extent, however, that BOTCC's underlying concern is to develop more formal methods whereby securities and commodities clearing corporations can share necessary information, the Commission believes such a goal is not only appropriate but a necessary adjunct to a coordinated intermarket system. Indeed, this conclusion was adopted by several post-Market Break studies of the marketplace, including: The *Brady Report*,[55] the *Division Report*,[56] the Commodities Futures Trading Commission reports,[57] and the *Working Group Report*.[58] The Commission urges the SCG SROs, individually and within the SCG context, to develop, and implement expeditiously, improvements in intermarket information sharing procedures.

Nevertheless, the Commission believes that the SCG proposals are not inconsistent with the Act for failure to incorporate commodities clearing corporations.[59] The Commission urges the BOTCC to pursue information sharing arrangements with the SCG and its member SROs—just as the Chicago Board of Trade and the Chicago Mercantile Exchange are pursuing similar objectives with the Intermarket Surveillance Group.

The Commission also notes, as a general matter, that numerous conferences over many months were required before these seven rather homogeneous clearing agencies and depositories, with close working relationships, could come to a written agreement on basic mutual problems that had been highlighted by the Market Break. Initially, various legal and organizational obstacles hampered their ability to address those problems; but, eventually, new ground was broken and important results achieved. This uniform proposal since has been approved by the boards of seven SROs. Thus, for the Commission now to require amendments to this major proposal, for any but the most substantive reasons, would be inappropriate and not in the public interest. In any case, the Commission finds that the recommendations set forth in BOTCC's comment letter, taken on their own merits, are not persuasive in determining whether the proposals, as filed, are consistent with the Act.

C. Summary

The Commission believes that the SCG and the SCG Agreement whereby clearing agencies would organize themselves to, among other reasons, share confidential financial information about common participants, address certain mutual problems of the marketplace, and, in general, ameliorate the financial risks to themselves caused by market price volatility, are fully consistent with the Act, particularly Section 17A of the Act, and warrant approval.

V. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the seven above-mentioned proposed rule changes (File Nos. SR–DTC–88–20, SR–MCC–88–10, SR–MSTC–88–07, SR–NSCC–88–09, SR–OCC–89–02, SR–PHILADEP–89–01, and SR–SCCP–89–01) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 18, 1989.

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[52] *See id.* at 10–19, 10–21.

[53] By contrast, the SCG Agreement, as SRO rules formally approved by the Commission under the Act, would provide clear legal authority for the information sharing arrangements that are set forth in the Agreement.

[54] At the last SCG meeting, which was held on May 25, 1989, at the offices of OCC in Chicago, the SCG SROs agreed to release to BOTCC and other commodity clearing organizations a list of clearing members for each SCG SRO.

[55] *See Report of the Presidential Task Force on Market Mechanisms*, 51, 64 (January 8, 1988), known as the *Brady Report*, after the Task Force's chairman, Nicholas F. Brady.

[56] *See, e.g., Division Report* at 10–55.

[57] *See, e.g.*, Divisions of Economic Analysis and Trading and Markets, Commodities Futures Trading Commission, Follow-up. *Report of Stock Index Futures Markets during October 1987*, 70–71 (January 6, 1988).

[58] *See Interim Report of the Working Group on Financial Markets, Appendix D* at 6–7 (May 1988).

[59] The Commission also believes that it is not inconsistent with the Act for clearing agencies to provide, by contract, terms for sharing confidential information with their own clearing agency subsidiaries. The parties to the Agreement apparently determined that, rather than use the name of a particular subsidiary (as recommended by BOTCC), they would use the generic term "subsidiary," a decision that may extend the effectiveness of that contractual provision. In any case, the Commission finds no legal issue here under the Act.

BOTCC, alternatively, recommended that the SCG Agreementprovide for the "automatic admission of new entities." The Commission notes that to be admitted to SCG membership, a clearing agency must voluntarily become a signatory to the SCG Agreement and that the Agreement sets forth specific contractual obligations for all members. Thus, inasmuch as a voluntary contractual agreement is involved, with various obligations incidental to that agreement, the Commission does not regard an automatic admission policy as a workable concept.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

July 18, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Beckman Instruments, Inc.
Common Stock, $.10 Par Value (File No. 7–4707)

CTS Corp.
Common Stock, No Par Value (File No. 7–4708)

Diasonics, Inc.
Common Stock, No Par Value (File No. 7–4709)

CIGNA High Income Shares of Beneficial Interest, No Par Value (File No. 7–4710)
First Interstate Bancorp
Class A Common Stock, No Par Value (File No. 7–4711)
Intermark, Inc.
Common Stock, $1.00 Par Value (File No. 7–4712)
Kemper Municipal Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4713)
Piedmont Natural Gas, Inc.
Common Stock, $.50 Par Value (File No. 7–4714)
Wellman, Inc.
Common Stock, $.001 Par Value (File No. 7–4715)
Van Kampen Merritt Municipal Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4716)
Benetton Group, SPA
American Depositary Shares, No Par Value (File No. 7–4717)
Cabletron Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–4718)
Itel Corporation
Common Stock, $1.00 Par Value (File No. 7–4719)
Kemper Corporation
Common Stock, $5.00 Par Value (File No. 7–4720)
Kemper Multimarket Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4721)
Mercury Finance Company
Common Stock, $1.00 Par Value (File No. 7–4722)
Network Equipment Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–4723)
Putnam Managed Municipal Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–4724)
Repsol, SA
American Depositary Shares, No Par Value (File No. 7–4725)
Van Kampen Merritt Intermediate Term High Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4726)
Van Kempen Merritt Limited Term Common High Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4727)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 8, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–17307 Filed 07–24–89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 18, 1989

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Benetton Group, S.P.A.
American Depositary Shares, No Par Value (File No. 7–4681)
TRC Companies
Common Stock, $.10 Par Value (File No. 7–4682)
Idex Corporation
Common Stock, $1 Par Value (File No. 7–4683)
IGI, Inc.
Common Stock, $.01 Par Value (File No. 7–4684)
Total System Services, Inc.
Common Stock, $.10 Par Value (File No. 7–4685)
Affiliated Publications, Inc.
Series A Common Stock, $.01 Par Value (File No. 7–4686)
Magnetek, Inc.
Common Stock, $.01 Par Value (File No. 7–4687)
Network Equipment Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–4688)
Plum Creek Timber Co. L.P.
Dep. Units, No Par Value (File No. 7–4689)
Weirton Steel Corporation
Common Stock, $.01 Par Value (File No. 7–4690)
Coast Savings Financial Inc.
Common Stock, No Par Value (File No. 7–4691)
Smithkline Beecham Plc
American Depositary Shares (representing "A" Ordinary Shares), No Par Value (File No. 7–4692)
Allergan, Inc.
Common Stock, $.01 Par Value (File No. 7–4693)
Smithkline Beecham Plc
American Depositary Shares (Equity Units) (representing 5 "B" Ordinary Shares & 1 share of $2.25 Cum. Part. Pfd Stock, No Par Value (File No. 7–4694)
Angeles Finance Trust
Class A Shares, $1 Par Value (File No. 7–4695)
Radice Corporation
Common Stock, No Par Value (File No. 7–4696)
Allstate Municipal Income Opportunities Trust II
Shares of Beneficial Interest, $.01 Par Value (File No. 7–4697)
Nuveen Performance Plus Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4698)
American Southwest Mortgage Investment Corporation
Common Stock $.01 Par Value (File No. 7–4699)
Berry Petroleum Co.
Class A Common Stock, $.01 Par Value (File No. 7–4700)
Cypress Fund Inc.
Common Stock, $.001 Par Value (File No. 7–4701)
Keystone Camera Products Corp.
Common Stock, $.40 Par Value (File No. 7–4702)
Michael's Stores, Inc.
Common Stock, $.10 Par Value (File No. 7–4703)
O'Brien Energy Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–4704)
Property Trust of America
Shares of Beneficial Interest, $1.00 Par Value (File No. 7–4705)
Whittaker Corporation
Common Stock, $.01 Par Value (File No. 7–4706)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 8, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–17308 Filed 7–24–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cities of Colonial Heights and Petersburg, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the cities of Colonial Heights and Petersburg, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, FHWA, 400 North Eighth Street, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone: (804) 771-2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace the Route 1 Appomattox River Bridge between the cities of Colonial Heights and Petersburg, Virginia. Bridge approach improvements would extend from Wythe Street in Petersburg north to Lafayette Avenue in Colonial Heights, a distance of approximately one mile.

Improvements to this corridor are considered necessary to provide for the existing and projected traffic demands. Ten alternatives are under consideration for the replacement of the existing Route 1 Appomattox River Bridge, including the Rebuild Alternative and the No-Build Alternative. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings have been held in the city of Petersburg on December 15, 1988, and June 15, 1989. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing and any additional public meetings. The draft EIS will be available for public agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 17, 1989.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 89-17346 Filed 7-24-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System of Records; Revised System of Records

Notice is hereby given that the Department of Veterans Affairs (VA) is amending a system of records entitled, "Accredited Representatives, Claims Agents, and Rejected Claims Agent Applicant Records—VA" (01VA022) which is set forth on pages 765 and 766 of the **Federal Register** publication, "Privacy Act Issuances," 1987 Compilation, Volume V. The system is being amended by revising the paragraphs for System Name; System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System; and Record Source Categories.

The purpose of this system of records is to document and store information on individuals who have applied for and/or have received accreditation by VA under 38 CFR 14.626, *et seq.* as service organization representatives or independent claims agents to represent claimants in the preparation, presentation, and prosecution of their claims before VA. The records include information that is relevant to service organization affiliation, qualifications, examinations, third-party evaluations, investigations, applications, and grants, denials, suspensions, and terminations of accreditation.

We are altering by amendment VA's "Accredited Representatives, Claims Agents, and Rejected Claims Agent Applicant Records—VA" system (01VA022) by revising the System Name to better reflect the coverage of the system. We are also revising the paragraph Categories of Individuals Covered by the System to include former members and employees of recognized service organizations and former claims agents previously accredited by VA, and individuals whose names have been submitted for accreditation as service organization representatives.

Investigative reports and other documentation concerning the fitness of prospective, present, or former claims agents and accredited representatives, correspondence relating to denial, suspension, or termination of accreditation of claims agents and representatives, correspondence concerning prospective and former claims agents and representatives, and applications for accreditation as a claim agent are being added to the paragraph Categories of Records in the System.

In addition, four new routine uses are being added: To permit disclosure of listings of accredited representatives, and of those no longer accredited, to recognized service organizations; to permit the disclosure to recognized service organizations of information from the system of records concerning applicants and present and past accredited representatives affiliated with that organization relative to a denial, suspension, or termination of accreditation by VA; to permit disclosure of information from the system of records relevant to a suspected violation or reasonably imminent violation of law, rule, or order to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or enforcing such law, rule, or order; and, to permit disclosure of information from the system of records upon request of the Department of Justice to enable it to represent the Government in any litigation.

The system includes paper records contained in individually identifiable folders and individual file cards retrievable under the representative's name. It also includes folder files on service organizations which have inquired about, applied for, or received recognition to represent claimants. In addition, the system includes listings of past and present accredited representatives and miscellaneous correspondence in computer files. The paragraphs Storage, Safeguards, Retention and Disposal, and Record Source Categories of the system notice are being changed to reflect current procedures and capabilities.

The system notice has also been rewritten to change all references to the "Veterans Administration" and "the

VA" to the "Department of Veterans Affairs" and "VA" in order to comply with the change in name and status provided for in Pub. L. 100–527, 102 Stat. 2635 (1988).

A "Report of Altered System" and an advance copy of the revised system notice have been sent to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(o) (Privacy Act), and guidelines issued by OMB (50 FR 52730), December 24, 1985, as modified by the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, 102 Stat. 2507.

Interested persons are invited to submit written comments, suggestions, or objections regarding the routine uses in this system of records to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue NW, Washington, DC 20420. All relevant material received before August 24, 1989, will be considered. All written comments received will be available for public inspection only in Room 132 of the above address, only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays, until September 5, 1989.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Department of Veterans Affairs, the routine uses in this system are effective August 24, 1989.

Approved: July 17, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Amendment to System of Records

The system identified as 01VA022, "Accredited Representatives, Claims Agents, and Rejected Claims Agent Applicant Records—VA," appearing on Pages 765 and 766 of the **Federal Register** publication, "Privacy Act Issuances," 1987 Compilation, Volume V, is amended by revising the entries shown below:

01VA022

SYSTEM NAME:

Current and Former Accredited Representative, Claims Agent, and Representative and Claims Agent Applicant and Rejected Applicant Records—VA.

SYSTEM LOCATION:

Records are maintained in the Office of General Counsel (022), Department of Veterans Affairs Central Office, Washington, DC 20420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by the system: (1) Members or employees, or former members or employees, of recognized service organizations accredited or previously accredited by the Department of Veterans Affairs (VA) to represent claimants for benefits; (2) claims agents (not attorneys) independent of a service organization and accredited or previously accredited by VA to represent claimants for benefits; and (3) individuals whose names have been submitted to VA by service organizations for accreditation or who have applied to VA to become claims agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include: (1) Name and other identifying information; (2) address; (3) service organization affiliations; (4) claims agent examination and grade; (5) correspondence concerning prospective, present, or former claims agents or accredited representatives including claims agent recommendations and evaluations from third parties; (6) VA Form 2–21 (Application for Accreditation as Service Organization Representative); (7) Application for Accreditation as Agent forms; (8) investigative reports and/or correspondence concerning the fitness of a prospective, present, or former claims agent or accredited representative; and (9) correspondence relating to or including the denial, suspension, or termination of accreditation of representatives or claims agents.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

6. Listings containing the names, business addresses, and status of accreditation of present and former accredited representatives may be provided to recognized service organizations.

7. The name and address of a prospective, present, or former accredited representative, and any information concerning such accredited representative which is relevant to a refusal to grant accreditation, or a potential or past suspension or termination of accreditation of such representative, may be disclosed to the service organization(s) with whom the representative is affiliated.

8. The name and address of a prospective, present, or former accredited representative, and any information which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

9. Any information in this system may be disclosed to the Department of Justice (DoJ), including U.S. Attorneys, upon its official request, or by VA upon its own initiative, in order for the U.S. Government, VA, or any VA official acting in his/her official capacity to respond to pleadings, interrogatories, orders or inquiries from the DoJ, and to supply the DoJ with information, to enable the DoJ to represent the U.S. Government in any phase of litigation or in any case or controversy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records are maintained in individual folders stored in file cabinets. File cards with name and business addresses of individuals covered by this system are maintained in file cabinets. Listings of accredited representatives and claims agents are maintained both on magnetic disk and in hard copy in file cabinets.

* * * * *

SAFEGUARDS:

1. Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

2. Access to Automated Data Processing files is controlled at two levels: (1) Terminals, central processing units, and peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected; and, (2) the system recognizes authorized users by means of an individually unique password entered in combination with an individually unique user identification code.

3. Access to VA Central Office is controlled during all hours by the Federal Protective Service and other security personnel.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an active accredited representative or claims agent. Once the representative or agent becomes inactive, the inactive records are maintained by the Veterans Affairs Central Office, Records Management Section for 3 years and then destroyed. Rejected applications, investigative material, and related correspondence are maintained in the Office of General Counsel for 10 years and then destroyed.

* * * * *

RECORD SOURCE CATEGORIES:

Applications for accreditation of individuals, investigative material, and recommendations and correspondence from service organizations and third-parties.

[FR Doc. 89-17331 Filed 7-24-89; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 141
Tuesday, July 25, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 31, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Renovation proposals regarding the Federal Reserve Bank of St. Louis.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 21, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17505 Filed 7-21-89; 3:11 pm]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, August 9, 1989.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of July, 1989.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: July 19, 1989.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 89-17492 Filed 7-21-89; 1:28 pm]

BILLING CODE 7550-01-M

POSTAL SERVICE (BOARD OF GOVERNORS)

Vote to Close Meeting

By telephone vote on July 17, 1989, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for August 14, 1989, in San Francisco, California. The meeting will involve consideration of a capital investment for the Technical Training Center Dormitory in Norman, Oklahoma.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Pace, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 89-17441 Filed 7-21-89; 1:27 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 54, No. 141
Tuesday, July 25, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Social Security Disability Program Demonstration Project

Correction

In notice document 89-14670 appearing on page 26113 in the issue of Wednesday, June 21, 1989, make the following corrections:

1. In the second column, in the first and second lines, "window's" and "windower's" should read "widow's" and "widower's" respectively.

2. In the same column, in the eighth line from the end of the first complete paragraph, the beginning citation should read "202(d)(1)(G)(i)".

3. In the same column, in the 12th line from the end, "increase" should read "increased".

4. In the third column, in the paragraph headed *Statutory Provisions to be Waived*, in the 20th line, "window(er)'s" should read "widow(er)'s".

5. In the same column, in the same paragraph, in the 26th line, the citation should read "202(e)(1)(II)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6731

[CO-930-09-4214-10; C-45714]

Cancellation of Public Land Order No. 6730; Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

Correction

In rule document 89-15294 beginning on page 27176 in the issue of Wednesday, June 28, 1989, in the third line of the heading, "Public Land Order 6371" should have read "Public Land Order 6731".

BILLING CODE 1505-01-D

federal register

Tuesday
July 25, 1989

Part II

Federal Deposit Insurance Corporation

12 CFR Part 335

Securities of Nonmember Insured Banks; Notice of Proposed Rulemaking

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

RIN 3064-AA45

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would amend the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under The Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78 et seq.) in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC"). Section 12(i) of the Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. The amendment is intended to comply with section 12(i) and to update the regulation. It covers the following: (1) Independent audit requirement, (2) compensation, (3) small transaction exemption, (4) issuer tender offers, (5) comprehensive review of proxy rules, (6) all holders and best price rules for tender offers, (7) shareholder communications, and (8) non-bank companies financial disclosure in merger-type transactions.

DATE: Written comments must be submitted on or before September 25, 1989.

ADDRESS: Comments should be sent to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550–17th Street, NW., Washington, DC 20429. Comments may be hand delivered to, and are available for reviewing in, Room 6099 on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: William F. Sullivan, Senior Financial Analyst, Division of Bank Supervision (202) 898–8903 or Gerald J. Gervino, Senior Attorney, Legal Division (202) 898–3723.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Paperwork Reduction Project (3064–0030), with copies to the Assistant Executive Secretary (Administration), Room 6096, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

The collections of information in this regulation are grouped under the title Securities of Insured Nonmember Banks (OMB No. 3064–0030) and are contained in §§ 335.212, 335.213, 335.221, 335.309a, 335.309b, 335.312, 335.321, 335.331, 335.332, 335.407, 335.408, 335.413, 335.414, 335.512, 335.513, and 335.627. This information is collected from insured nonmember banks that are subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78), and from their shareholders. The required information is considered necessary for actual and potential investors making investment decisions concerning the securities issued by the reporting banks.

The estimated annual reporting burden for the collections of information in this regulation is summarized as follows:

Number of Respondents: 5,058.
Number of Responses Per Respondent: 1.09.
Total Annual Responses: 5,500.
Hours Per Response: 10.48.
Total Annual Burden Hours: 57,629.

B. Background

Section 12(i) of the Exchange Act vests the powers, functions, and duties of the SEC to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Act with respect to nonmember banks in the FDIC. The same section requires the FDIC to issue regulations substantially similar to regulations issued by the SEC unless the FDIC finds that implementation of such regulations with respect to insured banks is not necessarily appropriate in the public interest, or for protection of investors, and the FDIC publishes the findings in the Federal Register. The proposal is intended to satisfy that requirement.

C. Amendments to Part 335

1. Independent Audit Requirement

Since 1964 most banks have generally had the option of using verification statements which express the opinion of a bank's principal accounting officer or internal auditor. On July 19, 1971, the SEC required all corporations reporting to it under the Exchange Act to have their financial statements audited by independent public accountants. SEC Rel. 34–9253, 36 FR 13915. (July 28, 1971.)

On September 30, 1975, the FDIC reviewed the question of requiring audits of banks' financial statements filed under Part 335. 40 FR 47346. (October 8, 1975.) At that time, less than half of those banks whose securities were registered filed certified financial statements. Currently, only nine banks reporting under Part 335 do not file certified financial statements.

In order to make reporting requirements for publicly held banks consistent with those requirements for all other publicly held corporations, the FDIC proposes to amend Part 335 of its regulations to eliminate the use of verification statements and to require that bank financial statements be audited by independent public accountants. It is intended that this requirement, if adopted, would be effective for financial statements issued for periods ending after December 15, 1989. The FDIC proposes to amend §§ 335.602 and 335.603 to conform to the SEC rule.

2. Compensation

On September 23, 1983, the SEC adopted an amended and retitled item of Regulation S–K, item 402, providing for uniform disclosure of the compensation paid to certain executive officers and directors. The amendment was intended to simplify the current disclosure requirements, reduce compliance burdens and allow SEC registrants greater flexibility in selecting a presentation format while providing investors and security holders with more comprehensive information concerning executive compensation. (SEC Rel. No. 34–20220; 43 FR 44467 (Sept. 29, 1983, corrected 48 FR 46012, Oct. 11, 1983). The FDIC would also amend its regulations in a similar fashion to provide greater flexibility in format and to otherwise conform with newer SEC requirements. A noteworthy change would be an increase in the threshold for disclosure of individual compensation of executive officers from $50,000 to $60,000. The FDIC proposes to amend § 335.212 item 7 to accomplish this result. Changes in other aspects of items 6 and 7 relating to directors, officers, and insider transactions, as modified by the SEC on December 13, 1982, SEC Rel. No. 34–19290, 47 FR 55861 (December 13, 1982) are also proposed, except for certain provisions governing disclosure of insider loans for banks which have historically been governed by more specific regulations in Part 335.

3. Small Transaction Exemption

SEC Rel. No. 34–18853, 47 FR 29652 (July 8, 1982) increased the reporting

exemption for small "insider trading" reports from $3,000 to $10,000 in market value for any six-month period. The FDIC proposes to amend § 335.410(h) to conform to the SEC change.

4. Issuer Tender Offers

On July 28, 1983, the SEC amended its issuer tender offer regulation (SEC rule 13e–4) to except from its requirements, offers by issuers to purchase shares from their security holders who own a specified number of shares (less than 100) as of a specified date prior to the announcement of the offer. A companion amendment was made to SEC rule 13(e)(3) (the "going private rule"). SEC Rel. No. 34–48 FR 34253 (July 28, 1983). The FDIC has applied SEC rules 13(e) (3) and (4) to nonmember bank transactions by a statement of policy. 46 FR 25295 (May 5, 1981). Since the time of adoption of this policy, issuer tender offers and going private transactions have become more frequent among nonmember banks. Thus, a specific rule in the FDIC's regulations applying SEC rules 13(e)(3) and 13(e)(4) to nonmember banks is desirable. The FDIC proposes to amend §§ 335.409 and 335.521 to reflect the application of these rules to registered nonmember banks.

5. Comprehensive Review of Proxy Rules

On November 10, 1986 the SEC adopted amendments to its proxy rules in order to bring to the proxy context the benefits of the SEC's existing integrated disclosure system. The amendments provided for simplified disclosure of compensation plans. The amendments also require new registrants to provide disclosure concerning prior changes in accountants and any related disagreements. In addition, certain changes updated the rules to comport with current SEC practice, interpretations and other changes of laws and rules. 51 FR 42048 (November 20, 1986).

The FDIC proposes to adopt technical changes made by the SEC which fit the regulatory scheme of Part 335. A major difference would be that the FDIC would not repeat many regulations in a separate information statement regulation. References to the Securities Act of 1933 filings would be eliminated, since banks are exempt from the Securities Act of 1933, 15 U.S.C. 77a *et seq.* (1982) ("Securities Act").

The proposed amendments primarily revise Subpart B of Part 335.

6. All Holders and Best Price Rules in Tender Offers

On July 11, 1986, the SEC adopted amendments to its tender offer rules providing that a bidder's or issuer's tender offer must be open to all holders of the class of securities subject to the tender offer and that any security holder must be paid the highest consideration paid to any other security holder during the tender offer. In addition, the SEC amended existing rules concerning minimum offering periods and withdrawal rights. SEC Rel. No. 34–23421, 51 FR 25873 (July 17, 1986).

The FDIC proposes to adopt the SEC amendments in substantially the form adopted by the SEC except that the issuer tender offer rules would be brought into play by the cross referencing regulation proposed in paragraph 4. Sections 335.507, 335.509(a), and 335.510 would be amended as set forth below.

7. Shareholder Communications

On November 25, 1986, the SEC adopted its new rule 14b–2 under the Exchange Act and related amendments to rules 14a–1, 14a–13, 14c–1 and 14c–7 in order to implement provisions of the Shareholder Communications Act of 1985 (Pub. L. 99–222, 99 Stat. 1737 (1985)). New rule 14b–2 governs banks as intermediaries and is administered by the SEC. Rules 14a–1, 14a–13, 14c–1 and 14c–7 would apply to nonbank issuers and are thus subject to our consideration under section 12(i) of the Exchange Act. The rules govern the process by which the registrants communicate with the beneficial owners of their securities that are registered in the name of a bank, its nominee, a broker, or other entity acting as agent, custodian or fiduciary (i.e., held in street name). The FDIC proposes to amend its regulations with respect to those provisions that deal with the bank as issuer. Appropriate amendments would be made to §§ 335.203 and 335.214.

8. Companies

SEC Rel. No. 34–23789, discussed in paragraph 4 above, also allows the incorporation by reference of information meeting the requirements of the proxy regulations that has already been filed under the Securities Act.

The FDIC proposes to amend its regulations to allow the incorporation by reference of filings on SEC forms where the person incorporating filings by reference is a holding company or nonbank company filing with the SEC. All filings incorporated by reference must be filed with the FDIC. Section 335.212, items 14 and 15 would be amended as set forth below.

9. Supplementary Statistical Disclosure

Pursuant to the SEC's Industry Guide 3, supplemental statistical disclosures of material lending and deposit activities may be relevent and useful to an understanding of the bank's operations. The management's discussion and analysis of financial condition and results of operations sections of the annual report and registration statement (Forms F–2 and F–1, respectively) are proposed to be expanded to include statistical information similar to that required by Securities Exchange Act Industry Guide 3. Information about yields and costs of various assets and liabilities, maturities and repricing characteristics of various assets and liabilities and risk elements in the lending portfolio would be required. SEC Rel. No. 69, 52 FR 18200 (May 8, 1987). The FDIC proposes to amend sections 335.309a and 335.312 to provide for informative disclosures by nonmember banks as appropriate.

D. SEC Amendments not Adopted

1. Elimination of Legal Size Paper

On December 21, 1982, the SEC announced the adoption of amendments to its rules to require the use of 8½" x 11" paper for all statements, applications, reports, documents and amendments thereto filed with the SEC. The reason given for the change was that the adoption of a uniform size for all documents filed under the SEC will achieve maximum cost-efficiency in the SEC's micrographics filing program. SEC Rel. No. 34–19356, 47 FR 58237 (December 30, 1982).

The FDIC does not intend to amend its rules to conform with the SEC in this respect. The FDIC does not use a micrographics filing program and therefore has no need for the change.

2. Shareholder Proposals

On August 23, 1983, the SEC adopted amendments to its shareholder proposal rule, rule 14a–8, 17 CFR 240.14a–8 (1986). The amendments introduce several new procedural requirements that proponents must meet, reduce the number of proposals that a proponent may submit to an issuer in any one year, allow proponents to include supporting statements even where management does not oppose their proposal, and make other changes.

The FDIC does not propose to adopt these changes because it has not experienced a need for a revision of the rule.

3. Reporting by Small Issuers

On July 8, 1986, the SEC adopted amendments to its regulation that would increase the number of issuers outside the scope of its registration and reporting requirements by adjusting the

total assets threshold upward to $5 million.

The FDIC does not intend to amend its regulations in this fashion because a $5 million threshold would not exempt any banks whose securities are registered under Part 335.

4. Preliminary Proxy Material—Shareholder Proposals

On December 22, 1987, the SEC adopted amendments to its proxy rules to eliminate the filing of "routine" preliminary proxy and information statements under certain circumstances. It also amended its shareholder proposal rule. SEC Rel. No. 34–25217, 52 FR 48977 (December 29, 1987).

In view of our past experience with proxy statement filings, we feel that bank management and bank shareholders profit from our advance staff review and comments. Many registered banks do not have special securities counsel. Staff review of preliminary proxy statements regularly detects errors and inconsistencies in filed material. In particular, statements as to share ownership and insider transactions are frequently corrected as a result of the review.

The FDIC specifically invites comments on the cost savings of implementing the SEC change and eliminating the filing of routine preliminary proxy and information statements. Thus, the FDIC does not propose to eliminate preliminary filing requirements for "routine" proxy statements. The amendments to the shareholder proposal rule are not proposed for the same reason as stated in the above paragraph D.2.

E. Miscellaneous

The regulations have been updated to reflect changes in the Call Reports and in other minor technical respects. Some corrections have been made.

F. Certain Factors

1. Alternatives Considered

Section 12(i) of the Act requires the FDIC to issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. The FDIC believes that the reasons for the SEC regulations proposed to be adopted are equally applicable to the banking industry.

2. Cost-Benefit Analysis

As noted above, the amendments are required by statute. Therefore, a cost-benefit analysis was not prepared. The FDIC feels that at this time it is not appropriate to utilize a flexible regulatory approach (small bank/large bank) since shareholders and investors in small banks have the need for the same quality information provided to shareholders and investors of large banks. The FDIC requests comments upon any increase in costs or additional burden the amendments may impose, which would not be outweighed by the benefits provided the bank, shareholders and the public. The FDIC is specifically requesting information from banks concerning projected start-up costs and continuing costs. To the extent feasible, these estimates should be allocated among the various new areas of regulation.

3. Regulatory Flexibility Act

The FDIC certifies that the proposal, if issued, would not have a significant economic impact on a substantial number of small banks or other entities. Of the banks affected by the proposal less than 60 banks have individual assets no greater than $25 million.

List of Subjects in 12 CFR Part 335

Accounting, Banks, Banking, Reporting and recordkeeping requirements, Securities.

Chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 335—SECURITIES OF NONMEMBER BANKS

1. The authority citation for Part 335 continues to read as follows:

Authority: Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78(i)).

§ 335.101 [Amended]

2. Section 335.101 is proposed to be amended by closing the parenthesis in the last sentence after "3064–0030", placing a period after that parenthesis, and removing the rest of that sentence.

3. Section 335.102 is proposed to be amended by:

(A) Redesignating paragraphs (b) through (d) as paragraphs (c) through (e); paragraph (e) as paragraph (g); paragraphs (f) through (h) as paragraphs (j) through (l); paragraphs (i) through (n) as paragraphs (o) through (t); paragraphs (p) through (bb) as paragraphs (v) through (hh); paragraphs (dd) through (hh) as paragraphs (mm) through (qq); paragraph (jj) as paragraph (ss);

(B). Revising and redesignating: paragraph (o) as paragraph (u); paragraph (cc) as paragraph (ii); paragraph (ii) as paragraph (rr);

(C) Adding: Paragraphs (b), (f), (h), (i), (m), (n), (jj), (kk), (ll); and

(D) Removing and reserving redesignated paragraph (l), as follows:

§ 335.102 Definitions

* * * * *

(b) *Accountants report.* The term "accountant's report," when used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

* * * * *

(f) *Audit (or examination).* The term "audit" (or "examination"), when used in regard to financial statements, means an examination of the statements by an accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

* * * * *

(h) *Call Report.* The term "Call Report" means the Consolidated Reports of Condition and Income for commercial banks (FFIEC forms 031, 032, 033 and 034) and for savings banks (FDIC form 8040/25).

(i) *Certified.* The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

* * * * *

(m) *Employee benefit plan.* For purposes of §§ 335.203 and 335.214, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers, and the term "exempt employee benefit plan securities" means: (1) Securities of the bank held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the bank or (2) if notice regarding the current solicitation has been given pursuant to § 335.214 (a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 335.214(b)(3), securities of the bank held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the bank.

(n) *Entity that exercises fiduciary powers.* The term "entity that exercises fiduciary powers" means any entity that holds securities in nominee name or

otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act or a broker or a dealer.

* * * * *

(u) *Last fiscal year.* The term "last fiscal year" of the bank means the last fiscal year of the bank ending prior to the date of the meeting for which proxies are to be solicited or an information statement is required to be distributed or, if the solicitation or information statement involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

* * * * *

(ii) *Qualified stock option, restricted stock option,* and *employee stock purchase plan.* The terms "qualified stock option," "restricted stock option," and "employee stock purchase plan" have the meanings given them in sections 422 through 424 of the Internal Revenue Code of 1986, as amended. For the purposes of this regulation, an option which meets all of the conditions of section 424(b) of the Internal Revenue Code of 1986 as amended, other than the date of issuance, shall be deemed to be a "restricted stock option."

(jj) *Record date.* The term "record date" means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(kk) *Record holder.* For purposes of §§ 335.203 and 335.214 the term "record holder" means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(ll) *Respondent bank.* For purposes of §§ 335.203 and 335.214, the term "respondent bank" means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

* * * * *

(rr) *Verified.* The term "verified", when used in regard to financial statements, has the same meaning as "certified".

* * * * *

4. Section 335.201 is proposed to be amended, by revising paragraphs (a) and (b) to read as follows:

§ 335.201 Requirement of statement.

(a) *Proxy statements.* No solicitation of a proxy (See 12 CFR 335.102 (gg) and (oo)) with respect to a security of a bank registered under section 12 of the Act shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information required by Form F–5.

(b) *Information statements.* If any bank having such a security outstanding fails to solicit proxies from the holders of any such security in a manner requiring the furnishing of a proxy statement, the bank shall transmit to all holders of record of such security a statement containing the information required by Form F–5A. The "information statement" required by the preceding sentence shall be transmitted: (1) At least 20 calendar days prior to any annual or other meeting of the holders of such security at which the holders are entitled to vote or (2) in the case of corporate action taken with the written authorization or consent of security holders, at least 20 days prior to the earliest date on which the corporate action may be taken. The "information statement" shall be transmitted to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the bank pursuant to section 14(a) of the Act: *Provided, however,* that in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the bank.

* * * * *

5. Section 335.203 is proposed to be amended by:

a. Revising paragraph (a) introductory text, (a)(1) and (a)(7);

b. Adding new notes after paragraphs (a)(9) and (b)(2);

c. Revising paragraph (a)(11); and

d. Removing the word "Six" and adding in its place the word "Three" in paragraph (b), as follows:

§ 335.203 Annual report to security holders to accompany statements.

(a) Any statement furnished on behalf of the bank that relates to an annual meeting (or special meeting in lieu of annual meeting) of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders.

(1) The report shall include, for the bank and its subsidiaries, consolidated balance sheets as of the end of each of the two most recent fiscal years, and statements of income, changes in capital accounts and changes in financial position and/or cash flows for fiscal years ending after July 15, 1988 for each of the three most recent fiscal years, prepared and audited in substantial compliance with Subpart F of this part. Any financial statement schedules (except schedule VI) or exhibits or separate financial statements which may otherwise be required in filings with the FDIC may be omitted.

* * * * *

(7) The report shall identify each of the bank's directors and officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed. See the definition of "officers" at § 335.102(y).

* * * * *

(9) * * *

Note to paragraph (a)(9): Pursuant to the undertaking required by paragraph (a)(9) of this section, a bank shall furnish a copy of its annual report on Form F–2 (§ 335.312) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (a) of this section, the person making the request was a beneficial owner of securities entitled to vote.

* * * * *

(11) This § 335.203 shall not apply, however, to solicitations made on behalf of the bank before the financial statements are available if solicitation is being made at the time in opposition to the bank and if the bank's statement includes an undertaking in boldface type to furnish such annual report to all persons being solicited at least 20 calendar days before the date of the meeting or, if the solicitation refers to a written consent or authorization in lieu of a meeting, at least 20 calendar days prior to the earliest date on which it may be used to effect corporate action.

* * * * *

(b) * * *

Note to paragraph (b)(2): To assist the staff, managements of banks are requested to indicate in a letter transmitting to the FDIC copies of their annual reports to security holders or in a separate letter at or about the time the annual report is furnished to the FDIC, whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

* * * * *

6. Section 335.204 is amended by:

a. Adding Note 1 and Note 2 at the end of paragraph (a);

b. Substituting the word "holidays" with "federal holidays" in paragraph (b);

c. Removing the word "Six" and adding in its place the word "Three" in paragraph (c);

d. Redesignating paragraphs (e) through (j) as (f) through (k) and adding a new paragraph (e);

e. Revising newly redesignated paragraphs (f) through (i).

§ 335.204 Material required to be filed.

(a) * * *

Note 1 to paragraph (a): The filing of revised material does not recommence the ten day time peirod unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

Note 2 to paragraph (a): The officials responsible for the preparation of the preliminary material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the FDIC at the earliest practicable date.

* * * * *

(e) All preliminary material filed pursuant to paragraph (a) or (b) of this section shall be accompanied by a statement of the date on which definitive copies therefor filed pursuant to paragraph (c) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (d) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individual who will make the actual solicitation.

(f) All copies of material filed under paragraphs (a) and (b) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the FDIC only and shall not be considered available for public inspection before definitive material has been filed with the FDIC, except that such material may be disclosed to any department or agency of the U.S. Government and to the Congress. The FDIC may make such inquiries or investigation with respect to the material as may be necessary for an adequate review thereof.

(g) Copies of replies to inquiries from security holders requesting further information and copies of communications that do no more than request that forms of proxy theretofore solicited be signed, dated, and returned need not be filed under this section.

(h) Notwithstanding the provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(e), copies of soliciting material in the form of speeches, press releases, and radio or television scripts may, but need not, be filed with the FDIC prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the FDIC as required by § 335.204(c) not later than the date such material is used or published. The provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(e) shall apply, however, to any reprints or reproductions of all or any part of such material.

(i) Where any statement, form of proxy, or other material filed pursuant to this section is revised, two of the copies of such amendment or revised material filed under § 335.204(c) shall be marked to indicate clearly the changes. If the amendment or revision alters the text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

§ 335.206 [Amended]

7. Section 335.206 is proposed to be amended by substituting the word "paragraph" with "section" in the second sentence in paragraph (a).

8. Section 335.207 is proposed to be amended by revising paragraph (d) to read as follows:

§ 335.207 Requirements as to proxy.

* * * * *

(d) No proxy shall confer authority:

(1) To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement;

(2) To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders;

(3) To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation; or

(4) To consent to or authorize any action other than the action proposed to be taken in the proxy statement or matters referred to in paragraph (c) of this section.

A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

* * * * *

9. Section 335.209 is proposed to be amended by revising paragraph (e) as follows:

§ 335.209 Presentation of information in statement.

* * * * *

(e) All proxy statements shall disclose on the first page thereof the complete mailing address, including zip code, of the principal executive offices of the bank and the approximate date on which the proxy statement and form of proxy are first sent or given to security holders. If action is to be taken by written consent, state the date by which consents are to be submitted if state law requires that such a date be specified or if the person soliciting intends to set a date.

* * * * *

10. Section 335.210 is proposed to be amended by revising paragraphs (b)(2) and (3) as follows:

§ 335.210 Mailing communications for security holders.

* * * * *

(b) * * *

(2) Any material that is furnished by the security holder shall be mailed with reasonable promptness by the bank after receipt of a tender of the material to be mailed, of envelopes or other containers therefor, of postage or payment for postage. The bank need not, however, mail any such material that relates to any matter to be acted upon at an annual meeting of security holders prior to the earlier of:

(i) A day corresponding to the first date on which the bank's proxy soliciting material was released to security holders in connection with the last annual meeting of security holders, or

(ii) The first day on which solicitation is made on behalf of the bank. With respect to any material that relates to any matter to be acted upon by security holders otherwise than at an annual meeting, the material need not be mailed prior to the first day on which solicitation is made on behalf of the bank management.

(3) The bank shall be responsible for the proxy statement, form of proxy, or other communication.

* * * * *

11. Section 335.212 is proposed to be amended by:

a. Revising the first paragraph under General Instructions;

b. Revising paragraph (b)(2) of Item 4, and paragraphs (a) and (d) of Item 5;

c. Removing paragraph (e) and redesignating paragraph (f) as paragraph (e) of Item 5;

d. Redesignating paragraph (g) as paragraph (f) and removing the Instruction to newly redesignated paragraph (f) of Item 5;

e. Adding instructions 1 through 7 of Item 5;

f. Revising paragraph (e) of Item 6;

g. Revising Item 7 in its entirety;

h. Revising the heading, introductory text and paragraphs (a) and (b) of Item 9, removing Items 10 and 11, and redesignating Items 12 through 22 as Items 10 through 20;

i. Revising newly redesignated Item 12 and paragraphs (a)–(c) of Item 13;

j. Revising the Option Disclosure Instruction that follows redesignated Item 20.

§ 335.212 Form for proxy statement (Form F–5).

Form F–5—Proxy Statement

General Instructions

Each proxy statement shall, to the extent applicable, include the information called for under each of the items below. In the preparation of the statement, particular attention should be given to the definitions in § 335.102.

* * * * *

Item 4—Interest of Certain Persons in Matters To Be Acted Upon

* * * * *

(b) * * *

(2) With respect to any person, other than a director or principal officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4(b) and (c) of Form F–6.

* * * * *

Item 5—Voting Securities and Principal Holders Thereof

(a) As to each class of voting securities of the bank entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held) state the number of shares outstanding and the number of votes to which each class is entitled.

* * * * *

(d)(1) Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Act) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's voting securities. The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership as specified in § 335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(2) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, and directors and officers of the bank as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(3) *Changes in control.* Describe any arrangements, known to the bank including any pledge by any person of securities of the bank or any of its parents, the operation of which may at a subsequent date result in a change in control of the bank.

* * * * *

Instructions to Item 5. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 335.403(d)(1). For purposes of paragraph (2), if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the bank as a group, does not exceed one percent of the class so owned, the bank may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

2. For the purposes of this Item, beneficial ownership shall be determined in accordance with § 335.403. Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

3. The bank shall be deemed to know the contents of any statements filed with the FDIC pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a bank may rely upon information set forth in the statements unless the bank knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (d)(1), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. For purposes of paragraph (2), in computing the aggregate number of shares owned by directors and officers of the bank as a group, the same shares shall not be counted more than once.

6. Paragrpah (f) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

7. Where the holder(s) of voting securities reported pursuant to paragraph (1) hold more than five percent of any class of voting securities of the bank pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not

clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

Item 6—Director and Principal Officers

* * * * *

(e) *Certain business relationships.* Describe any of the following relationships regarding directors or nominees for director that exist, or have existed during the bank's last fiscal year, indicating the identity of the entity with which the bank has such a relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation, the relationship between such entity and the bank and the amount of the business done between the bank and the entity during the bank's last full fiscal year or proposed to be done during the bank's current fiscal year:

(1) If the nominee or director is, or during the last fiscal year has been, principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity that has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments to the bank or its subsidiaries for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(2) If the nominee or director is, or during the last fiscal year has been, principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(3) If the nominee or director is, or during the last fiscal year has been, principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries was indebted at the end of the bank's last full fiscal year in an aggregate amount in excess of five percent of the bank's total consolidated assets at the end of such fiscal year;

(4) If the nominee or director is, or during the last fiscal year has been, a member of, or of counsel to, a law firm that the bank has retained during the last fiscal year or proposes to retain during the current fiscal year; *Provided, however,* that the dollar amount of fees paid to a law firm by the bank need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for that firm's last full fiscal year;

(5) If the nominee or director is, or during the last fiscal year has been, a partner or principal officer of any investment banking firm that has performed services for the bank, other than as a participating underwriter in a syndicate, during the last fiscal year or that the bank proposes to have perform services during the current year; *Provided, however,* that the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for that firm's last full fiscal year; or

(6) Any other relationships that the bank is aware of between the nominee or director and the bank that are substantially similar in nature and scope to those relationships listed in paragraph (b) (1) through (5).

Instructions to Paragraph (e) of Item 6

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity, other than the bank, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services the following may be excluded:

A. Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. Payments that arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received; or

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

3. In calculating indebtedness the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to the usual trade terms; or

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

4. No information called for by paragraph (b) need be given respecting any director who is no longer a director at the time of filing the registration statement or report containing such disclosure. If such information is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

* * * * *

Item 7—Compensation and Other Transactions With Management and Others

Furnish the information called for by this item if action is to be taken with respect to: (i) The election of directors, (ii) any bonus, profit sharing or other compensation plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a)(1) *Cash compensation.* Furnish, in substantially the tabular form specified, all cash compensation paid to the following persons through the latest practicable date for services rendered in all capacities to the bank and its subsidiaries during the bank's last fiscal year:

(i) *Five principal officers.* Each of the bank's five most highly compensated principal officers whose cash compensation required to be disclosed pursuant to this paragraph exceeds $60,000, naming each such person; and

(ii) *All principal officers.* All principal officers as a group, stating the number of persons in the group without naming them.

(2) *Bonuses and deferred compensation.* The Cash Compensation Table also shall include:

(i) All cash bonuses to be paid to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year unless such amounts have not been allocated at such time as compensation disclosure is filed;

(ii) All cash bonuses paid during the last fiscal year for services rendered in all capacities to the bank and its subsidiaries in a previous fiscal year, less any amount relating to the same contract, agreement, plan or arrangement included in the Cash Compensation Table for a prior fiscal year and less any amount that would have been so included but for the fact that the individual was not included in the Cash Compensation Table, as a named individual or as a member of the group, for such prior fiscal year; and

(iii) All compensation that would have been paid in cash to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year but for the fact that the payment of such compensation was deferred.

CASH COMPENSATION TABLE

(A)	(B)	(C)
Name of individual or number in group	Capacities in which served	Cash compensation

Instructions to paragraph (a) of Item 7

1. *Cash Compensation Table.* (A) The bank may include additional columns in the Cash Compensation Table. For example, the bank may segregate cash bonuses and deferred compensation from cash salaries and fees.

(B) Amounts deferred pursuant to section 401(k) of the Internal Revenue Code are to be included in paragraph (a) for the fiscal year during which they are accrued.

(C) Banks need list in Column (B) of the Cash Compensation Table only those prinicpal capacities served by each of the identified individuals. The cash compensation disclosed, however, must include cash compensation received in *all* capacities.

2. *Persons covered.* (A) Paragraph (a) of this item applies to any individual who was principal officer of the bank at any time during the last fiscal year. Information need not be disclosed, however, for any portion of the period during which such individual was not a principal officer of the bank, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose compensation is to be reported in the Cash Compensation Table, it is not necesary to report compensation that would have been reported in the Table had the individual been included in prior years.

(B) Banks should be flexible in determining which individuals should be named in the Cash Compensation Table in order to ensure that disclosure is made with respect to key policy making members of management. Consideration should be given to the question of whether an individual's level of executive responsibilities, viewed in conjunction with such individual's actual level of cash compensation is such that the bank reasonably may conclude that the person is among its five most highly compensated, key policy making principal officers. Under this standard, it may be appropriate, in certain circumstances, to include a principal officer of a subsidiary in the Cash Compensation Table.

(C) In certain circumstances, it may be appropriate for a bank not to include in the Cash Compensation Table an individual who is one of the bank's five most highly compensated principal officers. Among the factors that should be considered in determining not to name an individual are: (i) The distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (ii) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(b)(1) *Compensation pursuant to plans.* Describe briefly all plans, pursuant to which cash or non-cash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future, to the named individuals and group specified in paragraph (a) of this item. Information need not be given with respect to any group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate, in scope, terms, or operation, in favor of officers or directors of the bank and that are available generally to all salaried employees. The description of each plan shall include the following, except that the description of any defined benefit or actuarial plans need not include the information specified in paragraphs (b)(1)(vi) and (b)(1)(vii) of this item and the description of any stock option and stock appreciation right plan need not include the information specified in paragraph (b)(1)(vii) of this item;

(i) A summary of how the plan operates and who is covered by the plan;

(ii) The criteria used to determine amounts payable, including any performance formula or measure;

(iii) The time periods over which the measurement of benefits will be determined;

(iv) Payment schedules;

(v) Any recent material amendments to the plan;

(vi) Amounts paid or distributed pursuant to the plan to the named individuals and the group during the last fiscal year less any amount relating to the same plan which previously has been disclosed as accrued pursuant to paragraph (b)(1)(vii) of this item or a predecessor provision; and

(vii) Amounts accrued pursuant to the plan for the accounts of the named individuals and group during the last fiscal year, the distribution or unconditional vesting of which are not subject to future events.

(2) *Pension table.* As to defined benefit and actuarial plans, other than any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include, as the payment schedule required by paragraph (b)(1)(iv) of this item, a separate Pension Table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) to persons in specified compensation and years-of-service classifications. In addition, in furnishing the information required by paragraphs (b)(1)(i)–(v) of this item, include:

(i) The compensation covered by the plan, including the relationship of such covered compensation to the compensation reported in the Cash Compensation Table pursuant to paragraph (a) of this item, and state the current compensation covered by the plan for any individuals named in the Cash Compensation Table whose covered compensation differs substantially (by more than 10 percent) from that set forth in the Cash Compensation Table;

(ii) The estimated credited years of service for each of the individuals named in the Cash Compensation Table; and

(iii) A statement as to the basis upon which benefits are computed (*e.g.*, straight life annuity amounts) and whether or not the benefits listed in the Pension Table are subject to any deduction for Social Security or other offset amounts.

EXAMPLE OF PENSION TABLE OF SERVICE—

Remuneration	15	20	25	30	35
125,000					
150,000	xxx	xxx	xxx	xxx	xxx
175,000	xxx	xxx	xxx	xxx	xxx
200,000	xxx	xxx	xxx	xxx	xxx
225,000	xxx	xxx	xxx	xxx	xxx
	xxx	xxx	xxx	xxx	xxx

(3) *Alternative pension plan disclosure.* In furnishing the information required by paragraphs (b)(1)(i)–(v) of this item with respect to defined benefit or actuarial plans under which benefits are not determined primarily by final compensation (or average final compensation) and years of service include:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for

each of the individuals named in the Cash Compensation Table pursuant to paragraph (a) of this item.

(4) *Stock option and stock appreciation right plans.* In addition to providing the information required by paragraphs (b)(1)(i)–(vi) of this item, furnish:

(i) With respect to stock options granted during the last fiscal year: (A) The title and aggregate amount of securities subject to options; (B) the average per share exercise price; and (C) if such option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately.

(ii) With respect to the exercise or realization of options or stock appreciation rights held in tandem with options, state the net value of securities (market value less any exercise price) or cash realized during the last fiscal year.

(iii) With respect to plans pursuant to which stock appreciation rights not in tandem with options were granted during the last fiscal year: (A) the number of rights granted; and (B) the average per share base price thereof.

(iv) With respect to the exercise or realization of stock appreciation rights not in tandem with options, state the net value of the shares (market price) or cash realized during the last fiscal year.

Instructions to paragraph (b) of Item 7

1. *Format.* With the exception of those pension plans disclosed pursuant to paragraph (b)(2), the bank may use either a narrative, tabular or other format or combination of formats provided the information so disclosed is clear and understandable. Disclosure required by paragraph (b)(2), pertaining to certain defined benefit and actuarial plans, is required to be presented in the Pension Table format set forth in that paragraph.

2. *Cash paid pursuant to plans.* The cash compensation paid pursuant to a plan need not be disclosed as amounts paid or distributed pursuant to paragraph (b)(1)(vi) of this item if such compensation was included in the Cash Compensation Table pursuant to paragraph (a) of this item and a statement to that effect is made. Similarly, the cash compensation deferred under a deferred compensation plan need not be disclosed as amounts accrued pursuant to paragraph (b)(1)(vii) of this item if such compensation was included in the Cash Compensation Table and a statement to that effect is made.

3. *Definition of "plan".* The term "plan" includes, but is not limited to the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights, warrants, convertible securities, performance units and performance shares. A plan may be applicable to one person.

4. *Pension levels.* Compensation set forth in the Pension Table pursuant to paragraph (b)(2) of this item shall allow for reasonable increases in existing compensation levels; alternatively, banks may present as the highest compensation level in the Pension Table an amount equal to 120 percent of the amount of covered compensation of the most highly compensated individual named in the Cash Compensation Table pursuant to paragraph (a) of this item.

5. *Definition of "normal retirement age".* The term "normal retirement age" means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction because of age.

(c) *Other compensation.* Describe, stating amounts, any other compensation not covered by paragraphs (a) or (b) of this item that was paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this item unless:

(1) With respect to any named individual, the aggregate amount of such other compensation is the lesser of $25,000 or 10 percent of the compensation reported in the Cash Compensation Table for such person pursuant to paragraph (a) of this item or

(2) With respect to the group, the aggregate amount of such other compensation is the lesser of $25,000 times the number of persons in the group or 10 percent of the compensation reported in the Cash Compensation Table for the group pursuant to paragraph (a) of this item and a statement to that effect is made.

Instructions to paragraph (c) of Item 7

1. *Scope.* Compensation to be disclosed pursuant to this paragraph may include, among other things: (a) Personal benefits or; (b) securities or property that were paid or distributed other than pursuant to a plan. It does not, in any event, include cash, which is to be disclosed pursuant to either paragraph (a) or (b).

2. *Threshold.* If the amount of other compensation for a named individual or the group exceeds the established thresholds, the entire amount of such other compensation must be disclosed pursuant to this paragraph.

3. *Valuation.* Compensation within paragraph (c) shall be valued on the basis of the bank's and subsidiaries' aggregate incremental cost.

(d) *Compensation of directors*—(1) *Standard arrangements.* Describe any standard arrangement, stating amounts, pursuant to which directors of the bank are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the bank was compensated during the bank's last fiscal year for services as a director, stating the amount paid and the name of the director.

(e) *Termination of employment and change of control arrangement.* Describe any compensatory plan or arrangement, including payments to be received from the bank, with respect to any individual named in the Cash Compensation Table pursuant to paragraph (a) of this section for the latest or then next preceding fiscal year if such a plan or arrangement results or will result from the resignation, retirement or any other termination of such individual's employment with the bank and its subsidiaries or from a change in control of the bank or a change in the individual's responsibilities following a change in control and the amount involved, including all periodic payments or installments, exceeds $60,000.

General Instructions to Paragraphs (a)–(e) of Item 7

1. *Transactions with third parties.* Paragraphs (a)–(e) of Item 7 include transactions between the bank and a third party where the primary purpose of the transaction is to furnish compensation to any named individual or the group specified in paragraph (a) of this item. No information need be given in response to any paragraph of this item as to any transaction if the transaction has been reported in response to another paragraph of Item 7(a).

2. *Exclusions.* No information need be given pursuant to this Item with respect to interest on deferred compensation provided that the rate of interest does not exceed prevailing market interest rates either: (1) At the time the interest is accrued or (2) at the time the plan pursuant to which the compensation is deferred was established. Similarly, dividends awarded on restricted stock need not be disclosed provided that the restricted stock is not of a particular class available only to certain employees on a discriminatory basis.

(f) *Indebtedness of management.* (1) State as to each of the following specified persons ("specified persons"), who was indebted to the bank at any time since the beginning of its last fiscal year:

(i) The largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time during that period;

(ii) The amount thereof outstanding as of the latest practicable date;

(iii) The nature of the indebtedness and of the transaction in which it was incurred; and

(iv) The rate of interest paid or charged:

(A) Each director or principal officer of the bank;

(B) Each nominee for election as a director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder"); and

(D) Each associate of any such director, principal officer, nominee or principal security holder.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this item 7(f) unless any of the following are present:

(a) The extension(s) of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the

time for comparable transactions with other than the specified persons.

(b) The extension(s) of credit were not made in the ordinary course of business.

(c) The extension(s) of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), and (C) of this paragraph (f)(1) together with the person's associates, exceeded 10% of the equity capital accounts of the bank at the time or $5 million, whichever is less.

Note to instruction 2(d): For purposes of this instruction 2(d) only: (1) The information called for by paragraphs (f)(1)(iii) and (iv) of this item 7 need not be furnished; (2) A principal security holder shall mean each security holder known to the bank to own of record or beneficially more than ten (10) percent of any class of the bank's voting securities; and (3) The name of any associate need not be furnished.

(2) If aggregate extensions of credit to the specified persons as a group, exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year.

(i) The aggregate amount of such extensions of credit shall be disclosed, and

(ii) A statement shall be included, to the extent applicable, that the bank has had and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders, and their associates, on substantially the same terms, including interest rates and collateral on loans, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or present other unfavorable features.

(3) If any indebtedness required to be described arose under section 16(b) of the Act and had not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

(g) *Transactions with management.* Describe briefly any transactions since the beginning of the bank's last fiscal year or any presently proposed transactions, to which the bank was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any associate of any of the foregoing persons.

Instructions. 1. No information need be given in response to this item 7(g) as to any compensation or other transaction reported in response to item 7(a), (b), (c), (d), (e) or (f), or as to any transaction with respect to which information may be omitted under instruction (b)(1) to item 7(a).

2. No information need be given in answer to this item 7(g) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $60,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this item 7(g) where:

(a) The interest arises only: (i) From such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the persons making such determination.

6. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transactions shall be indicated.

7. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less then 10 percent of any class of equity securities of another corporation furnishing the services to the bank.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(h) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the bank's last fiscal year or presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the bank, or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially

more than five (5) percent of the outstanding voting securities of the bank;

(4) Any associate of any of the foregoing persons; and

(5) The bank or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4 and 5 to item 7(g) shall apply to this item 7(h).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this item 7(h) any compensation received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (h) with respect to

(a) Payments to the plan, or payments to beneficiaries, under the terms of the plan;

(b) Payment of compensation for services not in excess of five (5) percent of the aggregate compensation received by the specified person during the bank's last fiscal year from the bank; or

(c) Any interest of the bank which arises solely from its general interest in the success of the plan.

(i) *Legal proceedings.* Briefly describe any material legal proceeding to which any director, any nominee for election as a director, principal officer of the bank, any owner of record or beneficially of more than five (5) percent of any class of voting securities of the bank, or any associate of any such director, nominee, officer or security holder is a party adverse to the bank.

* * * * *

Item 9—Compensation Plans

If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid, furnish the following information:

(a) *All Plans.* (1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(2) State the benefits or amounts which will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group; and (iv) all employees as a group. If such benefits or amount are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last fiscal year if the plan had been in effect, if such benefits or amounts may be determined: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group; and (iv) all employees as a group.

(3) Furnish the information called for by Item 7(b) of this Form F–5 with respect to all compensation plans now in effect or in effect during the last three years except that information called for in paragraphs (b)(1)(vi) and (vii) and (b)(4) of Item 7(b) of this Form F–5 should be furnished with respect to the last three fiscal years for the following: (i) Each person (stating name and position) specified in Item 7(a)(1)(i) of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group, if such persons may participate in the plan; and (iv) all employees as a group, if such persons may participate in the plan. The information called for by paragraph (b)(4)(ii) of Item 7 of this Form F–5 need not be provided for all employees as a group. The information required by this paragraph (a)(3) is in lieu of the information otherwise called for by Item 7(b) of this Form F–5 in connection with the disclosure required by Item 7 of this Form F–5.

(4) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the bank or to alter the allocation of the benefits as between the groups specified in paragraph (a)(3), state the nature of the amendments which can be so made.

(b) *Specific plans.* (1) With respect to any pension or retirement plan submitted for security holder action, state: (i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and (ii) the estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraphs (b) (2) and (3) of Item 7 of this Form F–5.

(2) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, (i) state: (A) The title and amount of securities called for or to be called for by such options, warrants or rights; (B) the prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised; (C) the consideration received or to be received by the registrant or subsidiary for the granting or extension of the options, warrants or rights; (D) the market value of the securities called for or to be called for by the options, warrants or rights as of the latest practicable date; and (E) in the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the bank; and (ii) state separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable: (A) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (B) all current principal officers as a group; (C) all other current officers and directors who are not principal officers as a group; (D) each nominee for election as a director; (E) each associate of any such directors, principal officers or nominees; (F) each other person who received or is to receive 5 percent of such options, warrants or rights, and (G) all employees as a group.

Instructions to Item 9.

1. The term "plan" as used in this Item means any plan as defined in Instruction 3 of paragraph (b) of Item 7 of this Form F–5.

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the FDIC at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of § 335.204.

4. Paragraphs (a)(3) and (b)(2)(ii) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

* * * * *

Item 12. Mergers, Consolidations, Acquisitions and Similar Matters

If action is to be taken with respect to any transaction involving (i) the merger or consolidation of the bank into or with any other person or of any other person into or with the bank, (ii) the acquisition by the bank or any of its security holders of securities of another person, (iii) the acquisition by the bank of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the bank, or (v) the liquidation or dissolution of the bank, furnish the following information:

(a) Information about the transaction. Furnish the following information concerning the bank and (unless otherwise indicated) each other person: which is to be merged into the bank or into or with which the bank is to be merged or consolidated; the business or assets of which are to be acquired; which is the issuer of securities to be acquired by the bank in exchange for all or a substantial part of the bank's assets; or which is the issuer of securities to be acquired by the bank or its security holders:

(1) The name, complete mailing address (including the ZIP Code) and telephone number (including the area code) of the principal executive offices.

(2) A brief description of the general nature of the business conducted by the other person.

(3) A summary of the material features of the proposed transaction. If the transaction is set forth in a written document, file three copies thereof with the FDIC at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to § 335.204. The summary shall include, where applicable:

(i) A brief summary of the terms of the transaction agreement;

(ii) The reasons for engaging in the transaction;

(iii) An explanation of any material differences in the rights of security holders of the bank as a result of this transaction;

(iv) A brief statement as to the accounting treatment of the transaction; and

(v) The federal income tax consequences of the transaction.

(vi) The information required in the description of securities in a registration statement (Form F–1, Item 14) filed under this part, for a security being issued in connection with the transaction if the security holders entitled to vote or give an authorization or consent with regard to the transaction will receive such securities, unless: (i) the issuer of the securities is not a bank and would meet the requirements for use of the SEC's Form S–3 and elects to furnish information in accordance with the provisions of paragraph (b)(1);, (ii) capital stock is to be issued and (iii) securities of the same class are registered under section 12 of the Exchange Act and either (a) are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (b) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association.

(4) A brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the bank or of such other person and as to the effect of the transaction thereon and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(5) Furnish in comparative columnar form on a historical and (if material) pro-forma basis the selected financial data for the bank referred to below, for

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

Instructions to paragraph (a)(5).

1. The purpose of the selected financial data shall be to supply in a convenient and readable format selected financial data which highlight certain significant trends in the bank's financial condition and results of operations.

2. The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross-reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where such matters might cause the data reflected herein not to be indicative of the bank's future financial condition or results of operations.

3. All references to the bank in the table of selected financial data and in this Item shall mean the bank and its subsidiaries consolidated.

4. If interim period financial statements are included, or are required to be included, banks should consider whether any or all of the selected financial data need to be updated for such interim periods to reflect a material change in the trends indicated; where such updating information is necessary, banks shall provide the information on a comparative basis unless not necessary to an understanding of such updating information.

(6) In comparative columnar form, historical and pro forma per share data of the bank and historical and equivalent pro forma per share data of the other person for the following items:

(i) Book value per share as of the date selected financial data is presented;

(ii) Cash dividends declared per share for the periods for which selected financial data is presented; and

(iii) Income (loss) per share for the periods for which selected financial data is presented.

Instruction to paragraphs (a)(5) *and (a)*(6). For a business combination accounted for as a purchase, the financial information required by paragraphs (a)(5) and (a)(6) shall be presented only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, the financial information required by paragraphs (a)(5) and (a)(6) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a business combination accounted for as a pooling information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the bank by the exchange ratio so that the per share amounts are equated to the respective values for one share of the other person.

(7) Pro forma financial information with respect to this transaction, in accordance with § 335.628.

(8) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and if so the status of such compliance or approval.

(9) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the same information as would be required by Item 9(b) (1) through (6) of the SEC's Schedule 13E–3 (§ 240.13e–100 of 17 CFR).

(10) A description of any past, present or proposed material contracts, arrangements, understanding, relationships, negotiations for transactions during the periods for which financial statements are presented or incorporated by reference pursuant to this Item between the other person or its affiliates and the bank or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

(11) As to each class of securities of the bank or of the other person which is admitted to trading on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the transaction, state the high and low sale prices (or in the absence of trading in a particular period, the range of the bid and asked prices) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement or resolution with respect to the action was made.

(12) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year

(i) Are expected to be present at the security holders' meeting;

(ii) will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) *Information about the bank and other persons.* Furnish the information specified below for the bank and for other persons designated in paragraph (a) of this Item, if applicable (hereinafter all references to the bank should be read to include a reference to such other person unless the context otherwise indicates):

(1) Information required by Item 1 of this Form F–5, description of business;

(2) Information required by Item 3 of this Form F–5, description of property;

(3) Information required by Item 3 of Form F–2 (§ 335.312 of this part), legal proceedings;

(4) Information required by Item 5 of Form F–2 (§ 335.312 of this part), market price of and dividends on the bank's common equity and related stockholer matters;

(5) Financial statements meeting the requirements of subpart F of this part (12 CFR 335.601 *et seq.*), including financial information required with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(6) Item 6 of Form F–2 (§ 335.312 of this part), selected financial data;

(7) Item 8 of Form F–2 (§ 335.312 of this part), financial statements and supplementary data;

(8) Item 7 of Form F–2 (§ 335.312 of this part), management's discussion and analysis of financial condition and results of operations; and

(9) Item 8 of this Form F–5, changes in and disagreements with accountants on accounting and financial disclosure.

(c) If the other person is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act, furnish:

(1) The financial statements that would have been required to be included in an annual report to security holders pursuant to § 335.203 of this part had the company been required to furnish such a report; *Provided, however,* that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial

statements need be audited only to the extent practicable.

(2) The quarterly financial and other information that would have been required had the company been required to file Form F–4 (§ 335.331 of this part) for the most recent quarter for which such a report would have been on file at the time the proxy statement is mailed or for a period ending as of a more recent date.

(3) A brief description of the business done by the company which indicates the general nature and scope of the business.

(4) The information required by paragraphs (b) (4) and (6)–(8) of this Item 12 and the information required by Item 8 of this Form F–5.

(5) Schedule VI—Allowance for Possible Loan Losses.

(d) *Additional method of incorporation by reference.* In lieu of the provision of information about the bank and other persons required in paragraph (b) of this Item, the bank may incorporate by reference into the proxy statement the information required by this Item if it is contained in an annual report sent to security holders pursuant to the requirement of § 335.203 of this part with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates, provided such information substantially meets the requirements of the appropriate portions of paragraph (b)(3) of this Item.

Instructions to Item 12. 1. One copy of the definitive proxy statement filed with the FDIC shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

2. Any or all of the required financial statements and related information which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted.

3. If the bank or any of its securities or assets is to be acquired by other persons, the information regarding the other persons is required by this Item, other than information required by paragraphs (a) (1)–(3) and (a) (9)–(11) of this Item, need be provided only to the extent that: (1) The bank or its security holders who are entitled to vote or give an authorization or consent with regard to the action will become or remain security holders of the other persons; or (2) such information is otherwise material to an informed voting decision.

4. If the plan being voted on involves only the bank and one or more of its totally held subsidiaries and does not involve a liquidation of the bank or a spin-off, the information required by this Item, other than information required by paragraphs (a) (1)–(4) and (a) (8)–(11) of this Item, may be omitted.

(e) *Certain nonbank persons.* Where a party to the transaction (other than the bank) is eligible to use SEC Form S–2 or S–3, the bank may comply with this Item by providing the information for the other party that would be required by SEC Schedule 14A (17 CFR 240.14a–101).

* * * * *

Item 13—Financial Statements

(a) If action is to be taken with respect to any matter specified in items 10, 11, or 12 above, furnish audited financial statements of the bank and its subsidiaries such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. All schedules, except schedule VI—"Allowance for Possible Loan Losses" may be omitted.

(b) If action is to be taken with respect to any matter specified in item 12, furnish for each person specified therein, other than the bank, financial statements such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. However, the following may be omitted: (1) All schedules, except schedule VI—"Allowance for Possible Loan Losses"; and

(2) Statements for a subsidiary, all of the stock of which is owned by the bank, that is included in the consolidated statement of the bank and its subsidiaries. Such statements shall be audited, if practicable.

(c) Notwithstanding the provisions of this Item, any or all of the information required by paragraph (a) of this Item, not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. In the usual case the information is deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but the information is not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction, the authorization of preferred stock without present intent to issue or the authorization of preferred stock for issuance for cash in an amount constituting fair value.

* * * * *

Option Disclosure Instruction

The table set forth below is an illustration of the presentation in tabular form of the information required by item 7(b)(4) and instruction 3(c) to item 9(d), which also applies to items 10(d) and 11(c). If only item 7(b)(4) applies and item 9 is inappropriate, information need only be furnished for the period specified in item 7(b)(4), information as to shares sold may be omitted and the reference at the foot of the table to options granted to employees may be omitted. Other tabular presentations are, of course, acceptable if they include the necessary data. Tabular presentations may not be needed if only a very few options have been granted.

The following tabulation shows as to certain directors and officers and as to all directors and officers as a group (i) the amount of options granted since the beginning of the fifth previous full fiscal year, (ii) the amount of shares acquired since that date through the exercise of options granted since that date or prior thereto, (iii) the amount of shares sold during such period of the same class as those so acquired, and (iv) the amount of shares subject to all unexercised options held as of _____ (Insert date).

Common shares [1]	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted—19___ to date:				
Number of shares				
Average per share option price	$	$	$	$
Exercise—19___ to date: Number of shares				
Aggregate option price of options exercised	$	$	$	$
Aggregate market value of shares on date options exercised	$	$	$	[2]
Sales—19___ to date: Number of shares				
Unexercised at _____ 19___. Number of shares				
Average per share option price	$	$	$	$

[1] All common share figures have been adjusted in accordance with the terms of the options to reflect the stock split in 19___ and where applicable, to give effect to share dividends.

[2] Sales by directors and officers who exercised options during the period 19___ to date.

Note: In addition, during the period employees were granted options for _____ shares at an average option price per share of $_____.

12. Section 335.214 is proposed to be added to read as follows:

§ 335.214 Obligation of banks in communicating with beneficial owners.

(a) If the bank knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the bank intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the bank shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and if so, the number of copies of the proxy and other soliciting material necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such report to beneficial owners to whom such reports are to be distributed by such record holder or its nominee and not by the bank; and

(C) If the record holder has an obligation under 17 CFR 240.14b–1(c) or 17 CFR 240.14b–2(e) (2) and (3), whether an agent has been designated to act on its behalf in fulfilling such obligation and, if so, the name and address of such agent; and

(D) Whether it holds the bank's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the bank, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2(e) (2) and (3);

(B) The record date; and

(C) At the option of the bank, any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to 17 CFR 240.14b–2(a)(1), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however,* the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3) Make the inquiry required by paragraph (a)(1) of this section at least 20 business days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or, (ii) if consents or authorizations are solicited, and such inquiry is impracticable 20 business days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable, or (iii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; *Provided, however,* that if a record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s); and

(4) Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder or respondent bank may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with proxy soliciting material and/or annual reports to security holders pursuant to paragraph (a)(4) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

Note 1 to paragraph (a): If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to Section 17A of the Act (e.g., "Cede & Co.," nominee for the Depository Trust Company), the bank shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* 17 CFR 240.14a–1(i)).

Note 2 to paragraph (a): The attention of banks is called to the fact that each broker, dealer, bank, association and other entity that exercises fiduciary powers has an obligation pursuant to 17 CFR 240.14b–1(b) and 17 CFR 240.14b–2(b) (except as provided therein with respect to employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the bank has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2(e) (2) and (3).

Note 3 to paragraph (a): The attention of banks is called to the fact that banks have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

(b) Any bank requesting pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2(e) (2) and (3) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the bank pursuant to 17 CFR 240.14b–2(e)(1) whether such record holder or respondent bank holds the bank's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list to be compiled as of a date no earlier than five business days after the date the bank's request is received by the record holder or respondent bank; *Provided, however,* that if the record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the bank's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers; *Provided, however,* such

request shall not cover beneficial owners of exempt employee benefit plan securities as defined in 17 CFR 240.14a–1(d)(1); and, at the option of the bank, such request may give notice of any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

Note to paragraph (b): A bank will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A bank, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2(e) (2) and (3), provided that such bank notifies the record holders and respondent banks, at the time it makes the inquiry required by paragraph (a) of this section, that the bank will mail the annual report to security holders to the beneficial owners so identified.

(d) If a bank solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the bank shall cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

13. Section 335.220 is proposed to be amended by revising paragraph (b)(1)(iii) to read as follows:

§ 335.220 Special provisions applicable to election contests.

* * * * *

(b) * * *

(1) * * *

(iii) Any committee or group which solicits proxies, any member of the committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group.

* * * * *

§ 335.307 [Amended]

14. Section 335.307 is proposed to be amended by removing the word "remuneration" from paragraph (b)(3) and inserting in its place the word "compensation."

15. Section 335.309a is proposed to be amended by:

a. Removing the word "six" and adding in its place the word "three" in the second paragraph of "General Instructions";

b. Revising the title in Item 2;

c. Revising Instructions 2, 3, 6, 12 and 13 to Item 2;

d. Removing Instructions 19 and 20 and redesignating Instruction 21 as 19 under Item 2;

e. Revising Item 5;

f. Revising Item 7;

g. Removing Item 8;

h. Redesignating Item 9 as Item 8 and revising newly redesignated Item 8;

i. Redesignating Items 10 and 11 as Items 9 and 10 and revising newly redesignated Item 10;

j. Redesignating Items 12, 13, 14 as 11, 12, 13 and revising newly redesignated Item 13;

k. Removing Items 15 and 16 and redesignating Items 17, 18, 19 as 14, 15 and 16; and

l. Amending in newly redesignated Item 16 the Instructions as to Financial Statements by revising the introductory text, paragraphs A, B, C, E.10 and E.17; as follows:

§ 335.309a Form for registration of securities of a bank under section 12(g) of the Securities Exchange Act of 1934 (Form F–1).

* * * * *

Item 2—Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations, and Other Statistical Disclosure

* * * * *

Instructions

* * * * *

2. The following items shall be included in the table of financial data: Net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; longterm obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with SFAS 89 * may combine such information with the selected financial data appearing pursuant to this item.

* * * * *

6. Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in instructions 5(a), (b) and (c) to this item 2 with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the bank's judgment a discussion of segment information or of other subdivisions of the bank's business would be appropriate to an understanding of such business, the discussion would focus on each relevant, reportable segment or other subdivision of the business and on the bank as a whole.

* * * * *

12. Set forth the same information as is required to be furnished by Instruction 7 to Item 7 of Form F–2 at § 335.312.

13. The bank's discussion and analysis shall be of the financial statement and of other statistical data which the bank believes will enhance a reader's understanding of its financial condition, changes in financial condition, cash flows and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the bank's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in item 6 of a Form F–2 may be necessary.

* * * * *

Item 5—Security Ownership of Certain Beneficial Owners and Management

Set forth the same information as is required to be furnished by items 5 (d)(1), (d)(2), and (f) Form F–5 at § 335.212.

Note: The information required by item 5 (d)(2) of Form F–5 need not be included for any nominee for election as a director.

* * * * *

Item 7—Compensation of Directors and Officers

Set forth the same information as is required to be furnished by item 7 (a), (b), (c) and (d) of Form F–5 at § 335.212.

Item 8—Interest of Management and Others in Certain Transactions

(a) Set forth the same information for the past three years, as is required to be furnished by items 7 (f), (g) and (h) of Form F-5 at § 335.212.

Note: The information required by items 7 (f), (g) and (h) of Form F-5 need not be included for any nominee for election as a director.

* * * * *

Item 10—Number of Equity Security Holders

State in the tabular form indicated below, the approximate number of holders of record of each class of equity securities of the bank as of the end of the last fiscal year.

(1)	(2)
Title of class	Number of record holders
.....	.....

Instructions. 1. Attention is directed to the definitions of the term "equity security" in section 3(a)(11) of the Act and to the definition of the term "held of record" in § 335.102(p)(1).

2. Information need not be given with respect to the number of holders of "restricted stock options", "qualified stock options", or options granted pursuant to a plan qualified as an "employee stock purchase plan", as those terms are defined in sections 422 through 424 of the Internal Revenue Code of 1986, as amended.

* * * * *

Item 13—Securities Being Registered

(a) *Capital stock.* If capital stock is to be registered, state the title of the class and describe such of the matters listed in paragraphs (a) (1) through (5) as are relevant. A complete legal description of the securities need not be given.

(1) Outline briefly: (i) Dividend rights; (ii) terms of conversion; (iii) sinking fund provisions; (iv) redemption provisions; (v) voting rights, including any provisions specifying the vote required by security holders to take action; (vi) any classification of the Board of Directors, and the impact of such classification where cumulative voting is permitted or required; (vii) liquidation rights; (viii) preemption rights; and (ix) liability to further calls or to assessment by the bank and for liabilities of the bank imposed on its stockholders under state statutes (*e.g.*, to laborers, servants or employees of the bank), unless such disclosure would be immaterial because the financial resources of the bank or other factors make it improbable that liability under such state statutes would be imposed; (x) any restriction on alienability of the securities to be registered; and (xi) any provision discriminating against any existing or prospective holder of such securities as a result of such security holder owning a substantial amount of securities.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, describe briefly any restriction on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by, or amounts payable with respect to, the shares to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include the information regarding such other securities as will enable investors to understand such limitations or qualifications. No information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank of the shares.

(5) Describe briefly or cross-reference to a description in another part of the document, any provision of the bank's charter or by-laws that would have an effect of delaying, deferring or preventing change in control of the bank and that would operate only with respect to an extraordinary corporate transaction involving the bank [or any of its subsidiaries], such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation. Provisions and arrangements required by law or imposed by governmental or judicial authority need not be described or discussed pursuant to this paragraph (a)(5). Provisions or arrangements adopted by the bank to effect, or further, compliance with laws or governmental or judicial mandate are not subject to the immediately preceding sentence where such compliance did not require the specific provisions or arrangements adopted.

(b) *Debt securities.* If debt securities are to be registered, state the title of such securities, the principal amount being offered, and, if a series, the total amount authorized and the total amount outstanding as of the most recent practicable date; and describe the matters listed in paragraphs (b) (1) through (10) as are relevant. A complete legal description of the securities need not be given. For purposes solely of this Item, debt securities that differ from one another only as to the interest rate or maturity shall be regarded as securities of the same class. Outline briefly:

(1) Provisions with respect to maturity, interest, conversion, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the securities, together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities to other security holders or creditors of the bank where debt securities are designated as subordinated in accordance with Instruction 1 to this Item, set forth the aggregate amount of outstanding indebtedness as of the most recent practicable date that by the terms of such debt securities would be senior to such subordinated debt and describe briefly any limitation on the issuance of such additional senior indebtedness or state that there is no such limitation;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any asset ratio or the creation or maintenance of reserves;

(5) Provisions restricting the incurrence of additional debt or the issuance of additional securities; in the case of secured debt, whether the securities being registered are to be issued on the basis of unbonded bondable property, the deposit of cash or otherwise; as of the most recent practicable date, the approximate amount of unbonded bondable property available as a basis for the issuance of bonds; provisions permitting the withdrawal of cash deposited as a basis for the issuance of bonds; and provisions permitting the release or substitution of assets securing the issue; *Provided, however,* That provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain or the application of insurance moneys, and other similar provisions need not be described;

(6) The general type of event that consitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture;

(7) Provisions relating to modification of the terms of the security or the rights of security holders;

(8) If the rights evidenced by the securities to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, the information regarding such other securities as will enable investors to understand the rights evidenced by the securities[;] to the extent not otherwise disclosed pursuant to this Item; no information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank;

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in paragraph (a) of section 1273 of the Internal Revenue Code (26 U.S.C. 1273), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to sections 1271–1278;

(10) The name of the trustee(s) and the nature of any material relationship with the bank or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(c) *Warrants and rights.* If the securities described are to be offered pursuant to warrants or rights state:

(1) The amount of securities called for by such warrants or rights;

(2) The period during which and the price at which the warrants or rights are exercisable;

(3) The amount of warrants or rights outstanding;

(4) Provisions for changes to or adjustments in the exercise price; and

(5) Any other material terms of such rights or warrants.

(d) *Other securities.* If securities other than capital stock, debt, warrants or rights are to be registered, include a brief description (comparable to that required in paragraphs (a), (b) and (c) of this Item 13) of the rights evidenced thereby.

(e) *Market information for securities other than common equity.* If securities other than common equity are to be registered and there is an established public trading market for the securities, provide market information with respect to the securities comparable to that required by Item 12 of this Form F–1.

Instructions to Item 13. 1. Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

A. In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and if convertible or redeemable, a statement to that effect;

B. In the case of debt, the rate of interest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1955 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible or callable, a statement to that effect; or

C. In the case of any other kind of security, appropriate information of comparable character.

2. Where convertible securities or stock purchase warrants are being registered that are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall disclose:

A. Whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in a notice of the redemption or call;

B. The expiration or termination date of the warrants;

C. The kinds, frequency and timing of notice of the redemption or call, including the cities or newspapers in which notice will be published (where the securities provide for a class of newspapers or group of cities in which the publication may be made at the discretion of the bank, the bank should describe such provision); and

D. In the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption of call, for example, by reading the newspapers in which the notice of redemption or call may be published.

* * * * *

Instructions as to Financial Statements

These instructions specify the balance sheets and statements of income required to be filed as part of a registration statement on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, statement of cash flows, and the schedules to be filed in support thereof.

A. Financial Statements of the Bank

1. *Balance Sheets.* (a) The bank shall file an audited balance sheet as of the close of its latest fiscal year unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case the balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing, an audited balance sheet of the bank as of the end of the latest fiscal year.

2. *Statements of Income.* (a) The bank shall file audited statements of income for each of the three fiscal years preceding the date of the balance sheet required by instruction 1(a).

(b) There shall be filed with each balance sheet filed under instruction 1(b) an audited statement of income of the bank for the fiscal year immediately preceding the date of the balance sheet.

3. *Omission of Bank's Financial Statements in Certain Cases.* Notwithstanding instructions 1 and 2, the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

B. Consolidated Statements

4. *Consolidated Balance Sheets.* (a) There shall be filed an audited consolidated balance sheet of the bank and its majority-owned: (i) Bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, as of the close of the latest fiscal year of the bank unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case this balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement, and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing an audited consolidated balance sheet of the bank and such subsidiaries as of the end of the latest fiscal year.

5. *Consolidated Statement of Income.* (a) There shall be filed audited statements of income of the bank and its majority-owned (i) bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, for each of the three fiscal years preceding the date of the consolidated balance sheet required by instruction 4(a).

(b) There shall be filed with each balance sheet filed under instruction 4(b), an audited consolidated statement of income of the bank and such subsidiaries for the fiscal year immediately preceding the date of the balance sheet.

C. Unconsolidated Subsidiaries and Other Persons

6. *Separate Statements of Unconsolidated Subsidiaries and Other Persons.* There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other

* * * * *

E. Historical Financial Information

10. *Scope of Part E.* The information required by part E shall be furnished for the seven-year period preceding the period for which statements of income are filed, as to the accounts of each person whose balance sheet is filed. The information is to be given as to all of the accounts specified whether they are presently carried on the books or not. Part E does not call for certification but only for a survey or review of the accounts specified. It should not be detailed beyond a point material to an investor.

* * * * *

17. *Omission of Certain Information.* (a) No information need be furnished as to any subsidiary, whether consolidated or unconsolidated, for the period prior to the date on which the subsidiary became a majority-owned subsidiary of the bank or of a predecessor for which information is required above.

(b) No information need be furnished hereunder as to any one or more unconsolidated subsidiaries for which separate financial statements are filed if all subsidiaries for which the information is so omitted, considered in the aggregate, would not constitute a significant subsidiary.

(c) Only the information specified in instruction 16 need be given as to any predecessor or any subsidiary thereof if immediately prior to the date of succession thereto by a person

* * * * *

§ 335.310 [Amended]

16. Section 335.310(c) is proposed to be amended by removing the word "registrant's" from the first sentence and replacing it with the word "bank's".

17. Section 335.312 is proposed to be amended by:

a. Removing the word "registrant" and replacing it with the word "bank" each time it appears in paragraph D of General Instructions, and removing the word "Six" and adding in its place the word "Three" in the first sentence of paragraph D;

b. Adding a sentence to the end of Item 1(c) of Part I;

c. Removing the phrase "items 5 (d), (e) and (g) of Form F–5" and replacing it with "items 5 (d)(1), (d)(2) and (f) of Form F–5" in Item 4 and replacing "item 5(e) of Form F–5" with "item 5(d)(2) of Form F–5" in the note to Item 4;

d. In Part II, revising Item 6, Instructions 2, 3 and 5(a).

e. Amending Item 7 by removing the last sentence from paragraph (c); revising Instruction 7; removing Instruction 8 and redesignating Instructions 9 and 10 as Instructions 8 and 9;

f. Revising Item 8 introductory text and paragraphs (a) through (c);

g. In Part III, revising the title in Items 9 and 10; and

h. Removing the phrase "in § 335.102(ee)" and replacing it with "in § 335.102(nn) " in paragraph (9) of Item 11.

§ 335.312 Form for annual report of bank (Form F–2).

Form F–2—Annual Report Under Section 13 of the Securities Exchange Act of 1934

* * * * *

Part I (See Instruction E)

Item 1—Business

(c) * * *

The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of the income statement [Format F–9B].

* * * * *

Part II—(See General Instruction F–(2))

* * * * *

Instructions

* * * * *

Item 6—Selected Financial Data

2. The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continung operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with SFA S89 may combine such information with the selected financial data appearing pursuant to this item.

* * * * *

5. In addition, (a) if debt securities are registered under section 12 of the Act, the bank shall show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the bank or the bank and its consolidated subsidiaries.

* * * * *

Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations

* * * * *

Instructions

* * * * *

7. Banks should furnish statistical information similar to that required by Securities Exchange Act Industry Guide 3 [Statistical disclosure by bank holding companies] SEC Rel. No. 34–23846, 51 FR 43599 (November 25, 1986), 17 CFR Part 241 (1988) ("Guide 3") for each of the last three fiscal years of the bank, except, if the bank had assets of less than $200,000,000 or net worth of $10,000,000 or less as of the end of its latest fiscal year, information may be furnished for each of the last two fiscal years with respect to all items. If a material change in the information presented or the trend evidenced thereby has occurred, it may be appropriate to furnish statistical information for an additional interim period to keep the information from being misleading.

The information should be presented in tabular form and include descriptions of: I. Distribution of Assets, Liabilities, and Stockholder's Equity; Interest Rates and Interest Differentials; II. Investment Portfolio; III. Loan Portfolio; IV. Summary of Loan Loss Experience; V. Deposits; VI. Return on Equity and Assets; and VII. Short-Term Borrowings. Although no specific guidance as to the form and content is provided, relevant data, material to a description of lending and deposit activities, should include information about (a) yields and costs of various assets and liabilities, (b) maturities and repricing characteristics of various assets and liabilities and (c) risk elements, such as nonaccrual and past-due items in the lending portfolio. Generally, statistical information called for by Guide 3 should be based on average daily amounts. However, weekly or month-end averages may be used if compiling daily information is too costly or difficult as long as it is representative of operations.

Note to paragraph 7 of Item 7: If any such information is not reasonably available to the bank, the bank may present comparable information. Where information required by Guide 3 is substantially similar to that required by Call Report schedules (i.e.—Guide 3 items II and III, Investment Portfolio and Loan Portfolio, etc.), the Call Report schedule information may be presented instead.

* * * * *

Item 8—Financial Statements and Supplementary Data

These instructions specify the balance sheets and statements of income required to be filed as a part of annual reports on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, and/or statement of cash flows and the schedules to be filed in support thereof.

(a) *Financial Statements of the Bank.* (1) There shall be filed for the bank, in comparative cloumnar form, audited balance sheets as of the close of the last two fiscal years and audited statements of income for each of the three fiscal years preceding the date of the most recent balance sheet being filed.

(2) Notwithstanding paragraph (1), the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

(b) *Consolidated Statements.* There shall be filed for the bank and its majority-owned: (1) Bank premises subsidiaries, (2) subsidiaries doing a foreign banking business, and (3) significant subsidiaries, in comparative columnar form, audited consolidated balance sheets as of the close of the last two fiscal years of the bank and audited consolidated statements of income for three fiscal years.

(c) *Separate Statements of Unconsolidated Subsidiaries and Other Persons.* There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other persons" include 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

* * * * *

Part III—(See General Instruction F (3))

Item 9—Directors and Principal Officers of the Bank

* * * * *

Item 10—Management Compensation and Transactions

* * * * *

§ 335.321 [Amended]

18. Section 335.321 is proposed to be amended a. by removing the word "registrant" and substituting the word "bank" in paragraph (a) of Item 1; b. by removing the word "verified" and replacing it with the word "audited" wherever it appears in paragraph 2 under Financial Statements of Businesses Acquired, and c. by removing "a" in paragraph 2(a) in the last sentence, under Financial Statements of Businesses Acquired and replacing it with "an".

19. Section 335.331 is proposed to be amended by a. removing the word "Six" and replacing it with the word "Three" in paragraph E; b. removing the words

"verified financial statements" wherever they appear in paragraph (a)(5) of Item 1 and replacing them with the words "audited financial statements"; c. removing the words "registrant's from paragraph (b)(5) of Item 1 and replacing it with the word "bank's"; and d. revising paragraphs (a)(4) and (c)(3) of Item 1 as follows:

§ 335.331 Form for quarterly report of bank (Form F–4).

Form F–4

* * * * *

Item 1—Financial Statements

(a) * * *

(4) The statement of changes in financial position and/or statement of cash flows may be abbreviated, as appropriate.

* * * * *

(c) * * *

(3) Interim statements of cash flows/changes in financial position (See Statement of Financial Accounting Standards No. 95, Statement of Cash Flows) and statements of changes in capital accounts shall be provided for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year. Such statements may also be presented for the cumulative twelve-month period ending during the most recent fiscal quarter and for the corresponding preceding period.

Note to paragraph (c)(3): Restatement of prior years' statements of financial position is encouraged but is not required.

* * * * *

§ 335.332 [Amended]

20. Section 335.332 is proposed to be amended by: a. removing the word "registrant's" from the introductory text and paragraph B of General Instructions and replacing it with the word "bank's"; b. removing the word "registrant" from pargraphs B and C and SIGNATURES and replacing it with the word "bank"; and c. removing the word "Six" from paragraph C of General Instructions and replacing it with the word "Three".

§ 335.359 [Amended]

21. Section 335.359 is proposed to be amended by removing the word "Six" and adding in its place the word "Three" in the first sentence of paragraph (a).

§ 335.401 [Amended]

22. Section 335.401 is proposed to be amended by removing the word "Six" from the last sentences in paragraphs (a) and (c) and replacing it with the word "Three".

§ 335.402 [Amended]

23. Section 335.402 is proposed to be amended by removing the word "Six" from the last sentence of paragraph (a) and the second sentence of paragraph (b), and replacing it with the word "Three".

§ 335.407 [Amended]

24. Section 335.407 is proposed to be amended by removing the word "Six" from the Note and replacing it with the word "Three".

§ 335.408 [Amended]

25. Section 335.408 is proposed to be amended by removing the word "Six" from the Note at the end of the section and replacing it with the word "Three".

26. New § 335.409 is proposed to be added as follows:

§ 335.409 Going private transactions by a bank or its affiliates.

A bank or its affiliates (as defined in 17 CFR 240.13e–3) shall not engage in a Rule 13e–3 transaction (as defined in 17 CFR 240.13e–3) unless it meets the requirements of 17 CFR 240.13e–3, except that all filings shall be made with the FDIC and be titled with the name of the FDIC instead of the Securities and Exchange Commission.

§ 335.410 [Amended]

27. Section 335.410 is proposed to be amended by substituting "$3,000" with "$10,000" in paragraphs (h)(1) and (h)(2).

§ 335.503 [Amended]

28. Section 335.503 is proposed to be amended by removing the word "six" from paragraphs (a)(1) and (b), and replacing it with the word "three".

29. Section 335.507 is proposed to be amended by revising the introductory text of paragraph (a) as follows:

§ 335.507 Additional withdrawal rights.

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following period such offer, request or invitation remains open.

* * * * *

§ 335.509 [Amended]

30. Section 335.509 is proposed to be amended by removing the word "six" in paragraphs (a)(1) and (b)(1) and replacing it with the word "three".

31. New § 335.509a is proposed to be added to read as follows:

§ 335.509a Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; and

(2) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during the tender offer.

(b) Paragraph (a)(1) of this section shall not:

(1) Affect dissemination under § 335.505; or

(2) Prohibit a bidder from making a tender offer excluding all security holders in a state where the bidder is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the bidder to comply with such statute.

(c) Paragraph (a)(2) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, provided that:

(1) Security holders are afforded equal rights to elect among each of the types of consideration offered; and

(2) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(d) If the offer and sale of securities constituting consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state:

(1) The bidder may offer security holders in such state an alternative form of consideration; and

(2) Paragraph (c) of this section shall not operate to require the bidder to offer or pay the alternative form of consideration to security holders in any other state.

(e) This section shall not apply to any tender offer with respect to which the FDIC, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with this section is not necessary or appropriate in the public interest or for the protection of investors.

32. Section 335.510 is proposed to be amended by revising paragraph (b) as follows:

§ 335.510 Unlawful tender offer practices.

* * * * *

(b) Increase or decrease the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders: *Provided, however,*

That, for purposes of this paragraph, the acceptance for payment of an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer shall not be deemed to be an increase. For purposes of this paragraph, the percentage of a class of securities shall be calculated in accordance with section 14(d)(3) of the Act.

* * * * *

§ 335.512 [Amended]

33. Section 335.512 is proposed to be amended by removing the word "four" from the initial Instruction and replacing it with the word "one".

§ 335.513 [Amended]

34. Section 335.513 is proposed to be amended by removing the word "Six" from the initial Instruction and replacing it with the word "Three".

35. New § 335.521 is proposed to be added as follows:

§ 335.521 Tender offers by issuers.

A bank or its affiliates shall not make an "issuer tender offer" unless the offer meets the requirements of 17 CFR 240.13e–4, except that all filings shall be made with the FDIC.

36. The heading preceding § 335.602 and § 335.602 are proposed to be revised as follows:

Qualifications and Reports of Accountants

§ 335.602 General rules.

Every accountant's report with respect to financial statements filed under this part shall be dated, shall be signed manually, shall indicate the city and State where issued, and shall identify without detailed enumeration the financial statements covered by the report.

§ 335.603 [Removed and Reserved]

37. Section 335.603 is proposed to be removed and reserved.

38. Section 335.604 is proposed to be amended by revising paragraphs (a) (1) and (2) as follows:

(a) * * * (1) The FDIC will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his/her residence or principal office. The FDIC will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his/her residence or principal office.

(2)(i) The FDIC will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (A) in which, during the period of his/her professional engagement to examine the financial statements being reported on or at the date of his report, the firm or a member of the firm had, or was committed to acquire a direct financial interest or any material indirect financial interest or (B) with which during the period of his/her professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the firm or a member of the firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee. A firm will be deemed independent in regard to a particular person if a former officer or employee of the person is employed by the firm and the individual has been completely disassociated from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his/her employment by the person.

(ii) For the purposes of this section, the term "member" means (A) all partners, shareholders, and other principals in the firm, (B) any professional employee involved in providing any professional service to the person, its parents, subsidiaries, or other affiliates, and (C) any professional employee having managerial responsibilities and located in [the engagement office] or other office of the firm which participates in a significant portion of the audit.

* * * * *

§ 335.610 [Amended]

39. Section 335.610 is proposed to be amended by revising the first sentence to read as follows: "Financial statements shall be prepared in accordance with the applicable requirements of Formats 9 A, B, C, and D."

40. Section 335.618 is proposed to be revised as follows:

§ 335.618 Foreign activities.

If assets, revenue, or income (loss) before taxes and securities gains (losses), or net income (loss) associated with foreign activities, exceeded 10 percent of the corresponding amount in the related financial statements, the following disclosures concerning foreign activities shall be furnished in a note to the financial statements. The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of the income statement, Format F–9B.

(a) Loans. State separately loan categories as prescribed by schedule A column C of Consolidated Report of Condition, Schedule RC–C, FFIEC 031, as applicable. Categories of less than 10 percent of total loans related to foreign activities may be grouped with all other loans.

(b) Balances with banks in foreign countries. State separately balances with foreign branches of other U.S. banks and with other banks in foreign countries. (See lines 3 (a) and (b) of Schedule RC–A of the Consolidated Report of Condition, FFIEC 031. Also furnish the amount of interest-bearing balances included above.

(c) Deposit liabilities. Furnish deposit information as prescribed in Schedule RC–E, Part II of Consolidated Report of Condition, FDIC/FFIEC 031. State also the amount of interest-bearing deposits in denominations of $100,000 or more.

(d) Other borrowings. State separately short-term borrowings, other liabilities for borrowed money, and other indebtedness related to foreign activities corresponding to the amounts reported on Schedule RC, FFIEC 031, items 14, 16, 17, 18, and 19.

(e) Income and expense summary. For each period for which an income statement is filed, furnish information as prescribed in part 1, column B and part 2 of the Statement of Income, Schedule RI–D, Part I, FFIEC 031. State in a note the basis of pricing money transfers and the policy governing allocation of income and expenses to foreign activities.

(f) Allowance for possible loan and lease losses. For each period for which a statement of income is filed, furnish in a note a reconciliation of changes in the allowance for possible loan and lease losses applicable to loans related to foreign activities.

(g) If disclosure above is required, state separately in a note for each significant geographic area, and in the aggregate for all other geographic areas not deemed significant, the following:

(1) Total assets (net of valuation allowances).

(2) Total net interest income.

(3) Provisions for loan and lease losses and for allocated transfer risk.

(4) Other net noninterest income (expense) including gains (losses) on securities not held in trading accounts.

(5) Net income (loss).

Note to paragraph (g): A "significant geographic area" is one whose assets, operating income, or net income exceed 10 percent of the comparable amount as reported in the related financial statements.

§ 335.621 [Amended]

41. Section 335.621(e) is proposed to be amended by changing "26(b)" to "22(b)".

42. Section 335.622 is proposed to be amended by adding paragraph (d)(4) and revising paragraph (g)(2)(i) as follows:

§ 335.622 General notes to statement of income.

* * * * *

(d) * * *

(4) Those banks adopting SFAS No. 96, Accounting for Income Taxes, should disclose such adoption and provide appropriate income tax expense disclosure as therein required, in lieu of paragraph (d)(1) of this section.

* * * * *

(g) * * *

(2) * * *

(i) Disclosure shall be made in a note to financial statements of total interest income, total interest expense, net interest income, provision for loan and lease losses, other income (expense) net, income before extraordinary items and cumulative effect of a change in accounting, net income, and per share data based upon such income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

* * * * *

§ 335.623 [Amended]

43. Section 335.623(g) is proposed to be amended by changing the word "Board" in the first sentence to "FDIC".

44. Section 335.625 is proposed to be revised as follows:

§ 335.625 Statement of changes in financial position, and/or statement of cash flows.

A statement of changes in financial position and/or statement of cash flows, as appropriate, shall be filed with each statement of income filed pursuant to this part.

45. Section 335.626 is proposed to be amended by revising paragraph (a) as follows:

§ 335.626 Schedules to be filed.

(a) The following schedules shall be filed with each balance sheet filed under this part: Schedule I—Securities, Schedule III—Loans and Lease Financing Receivables; and Schedule IV—Bank Premises and Equipment.

* * * * *

46. Section 335.627 is proposed to be amended by:

a. Removing D Statement of Changes in Financial Position (Format F-9D);

b. Redesignating E Schedules as D and revising the heading to read "D Schedules (Format F-9D)";

c. Revising General Instruction 1;

d. Revising A Balance Sheet in its entirety;

e. Revising B Statement of Income in its entirety;

f. Revising Schedules I and III of newly redesignated D in their entirety.

§ 335.627 Format F-9 financial statements.

* * * * *

General Instructions

1. *Preparation of Financial Statements.*—The formats are intended to serve as guides for preparation of financial statements required to be filed under this part. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Requirements for inclusion of financial statements in certain other guideline forms required by Part 335 are found in the instructions to such forms.

The formats for the statements of changes in financial position and cash flows are not set forth herein. Refer to SFAS No. 95 "Statement of Cash Flows", Appendix C for an illustrative example of an acceptable format for banks.

Banks have the option of conforming their financial statement formats to the provisions of Article 9 of Regulation S-X of the SEC (17 CFR 210.9) in lieu of the formats set forth herein. Savings banks are encouraged to utilize Call Report formats for the Balance Sheet, Statement of Income, Statement of Changes in Equity Capital, and appropriate schedules.

* * * * *

A. Balance Sheet

The Balance Sheet shall be prepared in accordance with the instructions for the preparation of the Consolidated Report of Condition (FFIEC 031, 032, 033, 034 or FDIC 8040/25, as applicable) except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note: Banks subject to this part are required to report on the accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Balance Sheet required under this part.

Assets

1. *Cash and balances due from depository institutions.* (a) State separately (1) interest-bearing balances in other banks and (2) noninterest-bearing balances and cash.

(b) Any withdrawal and usage restrictions (including requirements of the Federal Reserve to maintain certain average reserve balances) or compensating balance requirements should be disclosed.

2. *Securities.* (a) Include securities held for investment only. Disclose the aggregate book value of investment securities: "show on the balance sheet parenthetically the aggregate market value at balance sheet date." The aggregate amounts should include securities pledged, loaned or sold under repurchase agreements and similar arrangements; borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securities of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) states of the U.S. and political subdivisions; and (3) other securities.

3. *Federal funds sold and securities purchased under agreements to resell.* These amounts should be presented gross and not netted against Federal funds purchased and securities sold under agreements to repurchase.

4. *Loans and lease financing receivables.* Disclose separately (1) total loans and lease financing receivables, (2) the related allowance for losses and (3) unearned income.

(a) Disclose on the balance sheet or in a note the amount of total loans in each of the following categories: (1) Commercial, financial and agricultural, (2) Real estate-construction, (3) Real estate-mortgage, (4) Installment loans to individuals, (5) Lease financing receivables, (6) Foreign, (7) Other. (State separately any other loan category regardless of relative size if necesary to reflect any unusual risks or uncertainties such as a substantial portion of total loans which are concentrated in one or a few industries or foreign countries).

(b) A series of categories other than those specified in (a) above may be used to present details of loans if considered a more appropriate presentation.

(c) The amount of foreign loans must be presented if the disclosures specified by § 335.618 are required.

(d) For each period for which an income statement is required, furnish in a note a statement of changes in the allowance for loan losses showing the balances at beginning and end of the period, provision charged to income, recoveries of amounts charged off and losses charged to the allowance.

(e)(1)(i) For each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed $60,000 during the latest year) made by the bank or any of its subsidiaries to directors, principal-officers, or principal holders of equity securities of the bank or any of its significant subsidiaries, or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include the aggregate amount at the beginning of the period, new loans, repayments, and other changes. (Other changes, if significant, should be explained.)

(ii) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not

exceed 5 percent of equity capital at the balance sheet date.

(2) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to (e)(1)(i) above relates to loans which are nonaccrual, past due (over 90 days) or restructured, as those terms are used in the Call Report, so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions on the financial statements.

(3) Notwithstanding the aggregate disclosure called for by (e)(1) above, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan.

5. *Assets held in trading accounts.* Include securities or any other investments held for trading purposes only.

6. *Premises and fixed assets.*

7. *Other real estate owned.* State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) for each period for which an income statement is required, a reconciliation of any valuation allowance account, including the balance at the beginning and end of the period, provision charged to income, and losses charged to the allowance.

8. *Investments in an indebtedness of unconsolidated subsidiaries and associated companies.*

9. *Customers' liability to the bank on acceptances outstanding.*

10. *Intangible assets.*

11. *Other assets.* Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds 30 percent of equity capital. The remaining assets may be shown as one amount.

(1) Accrued interest.

(2) Net deferred tax charges.

12. *Total assets.*

Liabilities

13. *Deposits.* (a) Disclose separately the amounts of noninterest bearing deposits and interest bearing deposits. The amount of noninterest bearing deposits and interest bearing deposits in foreign banking offices must be presented if the disclosures provided by § 335.618 are required.

(b) State in a note the aggregate amount of (1) time certificates of deposit in denominations of $100,000 or more and (2) other time deposits in denominations of $100,000 or more, in domestic offices and, if § 335.618 applies, foreign offices.

14. *Federal funds purchased and securities sold under agreements to repurchase and other short term borrowings.* (a) Disclose separately on the balance sheet or in a note, amounts payable for (1) federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper, and (3) other short term borrowings. Disclose any unused lines of credit for short-term financing.

(b) If the average balance outstanding during the period for any category was 30 percent or more of equity capital, provide the following information, with respect to each category, in a note:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end of period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowings outstanding during the period.

15. *Demand notes issued to the U.S. Treasury.*

16. *Other borrowed money.*—See supplemental instruction to Item 14.

17. *Mortgage indebtedness and obligations under capitalized leases.* (a) Report the amount of mortgages, liens, or other encumbrances on premises and fixed assets and on other real estate owned for which the bank or its consolidated subsidiaries are liable. If the bank is the lessee on capitalized lease property, include the bank's liability for capitalized lease payments. (See the Call Report Glossary entry for "lease accounting" for a discussion of accounting with bank as lessee.)

(b) State in a note material terms and conditions of each obligation, including (but not limited to): (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity or if maturing serially, a brief indication of the serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; and (6) the amount outstanding at the balance sheet date.

18. *Bank's liability on acceptances executed and outstanding.* Report the amount of liability that is represented by drafts and bills of exchange that have been accepted by the reporting bank, or by others for its account, and that are outstanding. See the Call Report Glossary entry for "Bankers Acceptances" for further information.

19. *Notes and debentures subordinated to deposits.* (a) Report the amount of outstanding notes and debentures (including mandatory convertible debt) that are subordinated to the deposits of the consolidated bank (see the Call Report Glossary entry for "Subordinated Notes and Debentures").

(b) State in a note the material terms and conditions of each obligation including, but not limited to: (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity, or if maturing serially, an indication of serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; (6) the amount outstanding at the balance sheet date; and (7) if convertible, the basis.

20. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 25 percent of the equity capital (except that amounts in excess of 5 percent of equity capital should be disclosed with respect to item (4)). The remaining items may be shown as one amount. (1) Income taxes payable, (2) Deferred income taxes, (3) Indebtedness to affiliates and other persons the investments in which are accounted for by the equity method, (4) Indebtedness to directors, executive officers, and principal holders of equity securities of the bank or any of its significant subsidiaries, (5) Accounts payable and accrued expenses, (6) Commitments and contingent liabilities, minority interest in consolidated subsidiaries.

21. *Total Liabilities*

22. *Limited-life preferred stock.* (a) Report the amount of any preferred stock that has a stated maturity date that can be redeemed at the option of the holder (excluding those issues of preferred stock that automatically convert into perpetual preferred stock or common stock at a stated date). State on the face of the balance sheet the title of each issue, the carrying amount and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (b) below.) Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying amount is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (b) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate.

(b) State in a separate note captioned "Redeemable Preferred Stock": (1) A general description of each issue, including its redemption features (e.g., sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event that a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed.

Equity Capital

23. *Perpetual preferred stock.* Report the amount of perferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder (including those issues of preferred stock that automatically convert into common stock at a stated date). State on the face of the balance sheet, or if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. Show in a note or separate statement the changes in each class of preferred shares

reported herein for each period for which an income statement is required to be filed.

24. *Common stock.* Report the aggregate par or stated value of outstanding common stock. State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par value per share and the dollar amount thereof. Show also the dollar amount, if any, of each class of shares subscribed to but unissued, and show the deduction of subscriptions receivable therefrom. Disclose in the statement of a note the changes in the aggregate par or stated value of outstanding common stock for each period for which an income statement is required.

25. *Surplus.*

26. *Undivided profits and capital reserves.* Report the amounts appropriated and unappropriated; restrictions which limit the payment of dividends; and the amount of undivided profits which represents undistributed earnings of 50 percent or less owned companies.

27. *Cumulative foreign currency translation adjustments.* (Not applicable to banks with domestic offices only).

28. *Total equity capital.*

29. *Total liabilities, limited-life preferred stock, and equity capital.*

B. Statement of income

The statement of income shall conform generally to the Consolidated Report of Income (FFIEC 031, 032, 033, 034 or FDIC 8040/25, as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note to B: See § 335.601 for general requirements of financial reporting.

The following captions and added supplemental instructions shall be observed in the preparation of the statement of income required under this subpart.

1. *Interest income.* Include commitment and origination fees, late changes and current amortization of premium and accretion of discount on loans which are related to or are an adjustment of the loan interest rate. Disclose separately.

(a) Interest and fee income on loans.

(b) Income from lease financing receivables.

(c) Interest income on balance due from depository institutions.

(d) Interest and dividend income on securities—Disclose separately (1) taxable interest income, (2) nontaxable interest income, and (3) dividends. State in a note interest and dividend income on

(i) U.S. Treasury securities and U.S. Government agency and corporation obligations.

(ii) Securities issued by states and political subdivisions in the U.S.

(iii) Other domestic securities (debt and equity).

(iv) Foreign securities (debt and equity).

(e) Interest income from assets held in trading accounts.

(f) Interest income on federal funds sold and securities purchased under agreements to resell.

(2) *Interest Expense.* Disclose separately:

(a) Interest on deposits.

(i) Interest on time certificates of deposit of $100,000 or more.

(ii) Interest on other deposits.

(b) Expense of federal funds purchased and securities sold under agreements to repurchase.

(c) Interest on demand notes issued to the U.S. Treasury and on other borrowed money.

(d) Interest on mortgage indebtedness and obligations under capitalized leases.

(e) Interest on notes and debentures subordinated to deposits.

(3) *Net interest income.*

(4) *Provision for loan and lease losses.*

(5) *Net interest income after provision for loan and lease losses.*

(6) *Noninterest income.* Disclose separately:

(a) Income from fiduciary activities.

(b) Service charges on deposit accounts.

(c) Trading gains (losses) and fees from foreign exchange transactions.

(d) Other foreign transaction gains (losses).

(e) Gains (losses) and fees from assets held in trading accounts. Report the net gain or loss from the sale of assets reportable in item 5, "Assets held in trading accounts," other than those trading gains (losses) and fees relating to foreign exchange transactions reported in item 6(c) above.

(f) Other noninterest income. Report all operating income of the bank not required to be reported in item 1(a) through 1(f) and 6(a) through 6(e). State separately the dollar amount of any individual component of this item which exceeds 25 percent of the total.

7. *Gain (losses) on securities not held in trading accounts.* Report the net gain or loss. Disclose in a note the method used to determine the cost of investments sold and the related income taxes.

8. *Noninterest expense.* (a) Salaries and employee benefits.

(b) Expenses of premises and fixed assets.

(c) Other noninterest expense. See item 6(f) for threshold for disclosure of individual components.

(d) Total noninterest expense.

(e) Amortization of goodwill.

(f) Minority interest in income of consolidated subsidiaries.

9. *Income (loss) before income taxes and extraordinary items and other adjustments.*

10. *Applicable income taxes (on item 9). See § 335.622(d).*

11. *Income (loss) before extraordinary items and other adjustments.*

12. *Extraordinary items and other adjustments.*

(a) Extraordinary items and other adjustments, gross of income taxes.

(b) Applicable income taxes (on item 12(a)).

(c) Extraordinary items and other adjustments, net of income taxes.

13. *Net income (loss).* Report the sum of items 10 and 11(c).

14. *Earnings per share data.*

D. Schedules (Format F–9D)

Schedule I—Securities

Exclude assets held in trading accounts.

	Book value (Col. A)	Market value (Col. B)
1. U.S. Treasury securities		
2. U.S. Government agency and corporation obligations:		
a. All holdings of U.S. Government-issued or guaranteed certificates of participation in pools of residential mortgages		
b. All other		
3. Securities issued by states and political subdivisions in the U.S.		
4. Other domestic securities (debt and equity):		
a. All holdings of private (i.e., nongovernment-issued or guaranteed) certificates of participation in pools of residential mortgages		
b. All other		
5. Foreign securities (debt and equity)		
6. Total (sum of items 1 through 5) (total of column A must equal call report schedule RC, item 2)		
7. Pledged securities		

* * * * *

Schedule III—Loans and Lease Financing Receivables

Net of unearned income and before adjustment for allowance for loan and lease losses. Excluding assets held in trading accounts.

	Book value
1. Loans secured by real estate:	
a. Construction and land development	
b. Secured by farmland (including farm residential and other improvements)	
c. Secured by 1–4 family residential properties	
d. Secured by multifamily (5 or more) residential properties	
e. Secured by nonfarm nonresidential properties	
2. Loans to depository institutions:	
a. To commercial banks in the U.S.:	
(1) To U.S. branches and agencies of foreign banks	
(2) To other commercial banks in the U.S	
b. To other depository institutions in the U.S	
c. To banks in foreign countries:	
(1) To foreign branches of other U.S. banks	
(2) To other banks in foreign countries	
3. Loans to finance agricultural production and other loans to farmers	
4. Commercial and industrial loans:	
a. To U.S. addressees (domicile)	
b. To non-U.S. addressees (domicile)	
5. Acceptances of other banks	

	Book value
6. Loans to individuals for household, family, and other personal expenditures (includes purchased paper):	
a. Credit cards and related plans	
b. Other	
7. Loans to foreign governments and official institutions (including foreign central banks)	
8. Obligations (other than securities) of states and political subdivisions in the U.S.:	
a. Nonrated industrial development obligations	
b. Other obligations (excluding securities)	
9. Other loans:	
a. Loans for purchasing or carrying securities (secured and unsecured)	
b. All other loans	
10. Lease financing receivables (net of unearned income)	
11. Less: Any unearned income on loans reflected in items 1–9 above)	
12. Total loans and leases, net of unearned income (sum of items 1 through 10 minus item 11) (must equal call report schedule RC, item 4a)	
13. Commercial paper included in call report schedule RC–C	

47. A proposed new § 335.628 "Pro Forma Financial Information" is added as follows:

§ 335.628 Pro Forma Financial Information.

I. Presentation Requirements

(a) Pro forma financial information shall be furnished when any of the following conditions exist:

(1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 335.623 a significant business combination accounted for as a purchase has occurred;

(2) After the date of the most recent balance sheet filed pursuant to § 335.628, consummation of a significant business combination to be accounted for by either the purchase method or pooling-of-interests method of accounting has occurred or is probable;

(3) The bank is offering its securities to the security holders of a significant business to be acquired or the proceeds from the offered securities will be applied, directly or indirectly, to the purchase of a specific significant business;

(4) The disposition of a significant portion of a business either by sale, abandonment or distribution to shareholders by means of a spin-off, split-up or split-off has occurred or is probable and such disposition is not fully reflected in the bank's financial statements included in the filing; or

(5) Other transactions or events have occurred or are probable for which disclosure of pro forma financial information would be material to investors.

(b) A business combination or disposition of a business shall be considered significant if:

(1) A comparison of the most recent annual financial statements of the business acquired or to be acquired and the bank's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary under conditions specified in § 335.103(nn); or

(2) The business to be disposed of meets the conditions of a significant subsidiary in § 335.102(nn).

(c) When consummation of more than one transaction has occurred or is probable during a fiscal year, the tests of significance in paragraph (b) of this section shall be applied to the cumulative effect of those transactions. If the cumulative effect of the transactions is significant, pro forma financial information shall be presented.

(d) For purposes of this section, the term "business" should be evaluated in light of the facts and circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations. A presumption exists that a separate entity, a subsidiary, or a division is a business. However, a lesser component of an entity may also constitute a business. Among the facts and circumstances which should be considered in evaluating whether an acquisition of a lesser component of an entity constitutes a business are the following:

(1) Whether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction; or

(2) Whether any of the following attributes remain with the component after the transaction:

(i) Physical facilities,
(ii) Employee base,
(iii) Market distribution system,
(iv) Sales force,
(v) Customer base,
(vi) Operating rights,
(vii) Production techniques, or
(viii) Trade names.

(e) This section does not apply to transactions between a bank and its totally owned subsidiaires.

II. Preparation Requirements

(a) *Objective.* Pro forma financial information should provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. Such statement should assist investors in analyzing the future prospects of the bank because they illustrate the possible scope of the change in the bank's historical financial position and results of operations caused by the transaction.

(b) *Form and content.* (1) Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of income, and accompanying explanatory notes. Where a limited number of pro forma adjustments are required and those adjustments are easily understood, a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

(2) The pro forma financial information shall be accompanied by an introductory paragraph which briefly sets forth a description of (i) the transaction, (ii) the entities involved, and (iii) the periods for which the pro forma information is presented. In addition, an explanation of what the pro forma presentation shows shall be set forth.

(3) The pro forma condensed financial information need only include major captions (*i.e.*, the numbered captions) prescribed by § 335.627 A and B. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income of the bank for the most recent three fiscal years, the caption may be combined with others. In calculating average net income, loss years should be excluded, unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

(4) Pro forma statements shall ordinarily be in columnar form showing condensed historical statement, pro forma adjustments, and the pro forma results.

(5) The pro forma condensed income statement shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the Bank within the 12 months succeeding the transaction shall be disclosed separately. It should be clearly indicated that such charges or credits were not considered in the pro forma condensed income statement. If the transaction for which pro forma financial information is presented related to the disposition of a business, the pro forma results should give effect to the disposition and be presented under an appropriate caption.

(6) Pro forma adjustments related to the pro forma condensed income statement shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustment which give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the bank, and (iii) factually supportable. Pro forma adjustments related to the pro forma condensed balance sheet shall be computed assuming the transaction was consummated at the end of the most recent period for which a balance sheet is required by § 335.623 and shall include adjustments which give effect to events that are directly attributable to the transaction and factually supportable, regardless of whether they have a continuing impact or are nonrecurring. All adjustments should be referenced to notes which clearly explain the assumption involved.

(7) Historical, primary and fully diluted per share data based on continuing operations (or net income if the bank does not report discontinued operations, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes) for the bank, and primary and fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction shall be presented on the face of the pro forma condensed income statement together with the number of shares used to compute such per share data. For transactions involving the issuance of securities, the number of shares used in the calculation of the pro forma per shares outstanding during the period, adjusted to give effect to shares subsequently issued or assumed to be issued had the particular transaction or event taken place at the beginning of the period presented. If a convertible security is being issued in the transaction, consideration should be given to the possible dilution of the pro forma per share data.

(8) If the transaction is structured in such a manner that significantly different results may occur, additional pro forma presentations shall be made which give effect to the range of possible results.

Instructions

1. The historical statement of income used in the pro forma financial information shall not report operations of a segment that has been discontinued, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes. If the historical statement of income includes such items, only the appropriate portion of the statement (and appropriate captions) should be used in preparing pro forma results.

2. For a purchase transaction, pro forma adjustments for the income statement shall include amortization of any intangible asset, depreciation and other adjustments based on the allocated purchase price of net assets acquired. Disclose in a note the effect which the purchase adjustment will have on the reported results of operations for each of the next five years if such adjustments:

(a) Involve a significant write-down of the historical cost of the acquired assets to their fair value at the acquisition date; and

(b) Will have a significant effect on earnings in periods immediately following the acquisition which will be progressively eliminated over a relatively short period.

3. For a disposition transaction, the pro forma financial information shall begin with the historical financial statements of the bank and show the deletion of the business to be divested along with the necessary pro forma adjustments, including adjustments relating to expenses that will be or have been incurred on behalf of the business to be divested. *e.g.*, advertising costs and personnel expenses.

4. When consummation of more than one transaction has occurred or is probable during a fiscal year, the pro forma financial information may be presented on a combined basis; however, in some circumstances. *e.g.*, where some transactions have been consummated and the others are probable, it may be more useful to present the pro forma financial information on a nonaggregated basis, even though some or all of the transactions would not meet the tests of significance individually. For combined presentations, a note should explain the various transactions and disclose the maximum variances in the pro forma financial information which would occur for any of the possible combinations. If the pro forma financial information is presented in a proxy or information statement for purposes of obtaining shareholder approval of one of the transactions, the effects of that transaction must be clearly set forth.

5. Income tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which pro forma condensed income statements are presented and should be reflected as a separate pro forma adjustment.

(c) *Periods to be presented.* (1) A pro forma condensed balance sheet as of the end of the most recent period for which a consolidated balance sheet of the bank is required by § 335.623 shall be filed, unless the transaction is already reflected in such balance sheet.

(2)(i) Pro forma condensed statements of income shall be filed for only the most recent fiscal year and for the period from the end of the most recent fiscal year to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of income shall not be filed when the historical income statement reflects the transaction for the entire period.

(ii) For a business combination accounted for as a pooling of interests, the pro forma income statements (which are in effect a restatement of the historical income statements as if the combination had been consummated) shall be filed for all periods for which historical income statements of the bank are required.

(3) Pro forma condensed statements of income shall be presented using the bank's fiscal year-end. If the most recent fiscal year-end of any other entity involved in the transaction differs from the bank's most recent fiscal year-end by more than 93 days, the other entity's income statement shall be brought up to within 93 days of the bank's most recent fiscal year-end, if practicable. This updating could be accomplished by adding subsequent interim period results to the most recent fiscal year-end information and deducting the comparable preceding year interim period results. Disclosure shall be made of the periods combined and of the sales or revenues and income for any periods which were excluded from or included more than once in the condensed pro forma income statements (*e.g.*, an interim period that is included both as part of the fiscal year and the subsequent interim period).

(4) Whenever unusual events enter into the determination of the results shown for the most recently completed fiscal year, the effect of such unusual events should be disclosed and consideration should be given to presenting a pro forma condensed income statement for the most recent twelve-month period, in addition to those required in paragraph (c)(2)(i) of this section, if the most recent twelve-month period is more representative of normal operations.

III. Presentation of Financial Forecast

(a) A financial forecast may be filed in lieu of the pro forma condensed statements of income required by § 335.628 II(b)(1).

(1) The financial forecast shall cover a period of at least 12 months from the later of (i) the date of the most recent balance sheet included in the filing or (ii) the consummation date or estimated consummation date of the transaction.

(2) The forecasted statement of income shall be presented in the same degree of detail required by § 335.628 II(b)(3) for the pro forma condensed statements of income.

(3) Assumptions particularly relevant to the transaction and effects thereof should be clearly set forth.

(4) Historical condensed financial information of the bank and the business acquired or to be acquired, if any, shall be presented for at least a recent 12 month period in parallel columns with the financial forecast.

(b) Such financial forecast shall be presented in accordance with the guidelines established by the American Institute of Certified Public Accountants.

(c) Forecasted earnings-per-share data shall be substituted for pro forma per-share data.

(d) This section does not permit the filing of a financial forecast in lieu of pro forma information required by generally accepted accounting principles.

48. Section 335.701 is proposed to be amended by adding a note at the end of the section as follows:

§ 335.701 Filing of material with the FDIC.

Note: Official filings made at the FDIC's office in Washington, DC should be addressed as follows:

Attention: Registration and Disclosure Section, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

§ 335.702 [Amended]

49. Section 335.702 is proposed to be amended by removing the words "at the New York, Chicago, and San Francisco Federal Reserve Banks and" from the second sentence.

By Order of the Board of Directors.

Dated at Washington, DC, this 16th day of May 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–12496 Filed 7–24–89; 8:45 am]

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Tuesday
July 25, 1989

Part III

Department of Commerce

15 CFR Part 8b

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs; Proposed Rule

DEPARTMENT OF COMMERCE

15 CFR Part 8b

[Docket No. 81256-8256]

RIN 0690-A023

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

AGENCY: Department of Commerce (DOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the regulation issued by the Department of Commerce (Commerce) for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

DATE: To be assured of consideration, comments must be in writing and must be received by September 25, 1989.

ADDRESSES: Comments should be sent to Arthur E. Cizek, Chief, Compliance Division, Office of Civil Rights, Office of the Secretary, Department of Commerce, Washington, DC 20230 Telephone (202) 377-4993. Comments received will be available for public inspection at Room 6107 of the Herbert C. Hoover Building, 14th & Constitution Avenue, NW., Washington, DC 20230 from 8:30 a.m. to 5:00 p.m., Mondays through Fridays except legal holidays. Copies of this notice are available on tape for persons with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cizek, Chief, Compliance Division, Office of Civil Rights, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377-4993 (voice) or (202) 377-5691 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides in part that—

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

The agency's current section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It requires that new construction or alteration meet the most current standard for physical accessibility prescribed by the General Services Administration (GSA) under the Architectural Barriers Act. It provides that alternative standards may be adopted when it is clearly evident that equivalent or greater access to the facility is thereby provided. The proposed revision set forth in this document will reference UFAS in place of the current standard. In this respect, the proposed amendment is largely a technical one, because (as explained below) UFAS is now GSA's standard prescribed under the Barriers Act.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under Architectural Barriers Act [49 FR 31528 (see discussion *infra*)]. The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 requlations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

Background of Accessibility Standards

The Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157, requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the Department of Defense, the Department of Housing and Urban Development, the U.S. Postal Service, and GSA) to prescribe the accessibility standards. Section 502 of Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978 the Rehabilitation Act was amended to require the ATBCB, *inter alia*, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting agencies. The minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190.[1]

On August 7, 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among the four agencies' Barriers Act standards, and among those standards and accessibility standards used by the private sector. The Department of Housing and Urban Development (HUD) and GSA have incorporated UFAS into their Barriers Act regulations (*see* 24 CFR Part 40 (HUD) and 41 CFR Subpart 101-19.6 (GSA)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1-1980, published by the American National Standards Institute. (The 1980 ANSI standard contains few scoping provisions.) ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's original accessibility standard, ANSI A117.1, "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People," was published in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1-1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

The proposed amendment would amend the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from the Department of Commerce to refer to UFAS.

The agency has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability

[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 1111 18th Street, NW., Suite 500, Washington, DC 20036. The telephone number is (202) 653-7834 (Voice/TDD). This is not a toll free number.

to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Effect of Amendment

The agency's current section 504 rule requires that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment would not affect the current requirements but would merely provide that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," the agency anticipates that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360-degree turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient bedrooms be accessible (see UFAS section 4.1.4.(9)(b)), by using large accessible wards that make it possible for 50% of all beds in the facility to be accessible to individuals with handicaps. The result is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodies persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with GSA's Architectural Barriers Act regulation incorporating UFAS, at 41 CFR Subpart 101–19.6.

The proposed revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS section 4.1.6, *Accessible buildings: alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted by the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the proposed amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or residents or employees with handicaps.

The proposed revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alternations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

Rulemaking Requirements

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ under Executive Order 12250 of November 2, 1980. The ATBCB

has been consulted in the development of this document in accordance with 28 CFR 41.7.

This proposed rule is not a major rule within the meaning of Executive Order 12291 of February 17, 1981 and, therefore, a regulatory impact analysis has not been prepared.

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant economic impact on small business entities. Because its effect will be upon individuals, ensuring that no qualified individual with handicaps, will on the basis of these handicaps, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any federally assisted program or activity, the rule will not significantly impact the entities regarding costs of compliance with the rule, costs of completing paperwork or recordkeeping requests, the competitive positions of small entities in relation to larger entities, cash flow and liquidity of small entities, or the ability of a small entity to remain in the market. Therefore, a Regulatory Flexibility Analysis has not been prepared for purposes of the Regulatory Flexibility Act.

This proposed rule does not contain collections of information for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 of October 26, 1987.

List of Subjects in 15 CFR Part 8b

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reason stated in the preamble, Commerce proposes to amend 15 CFR Part 8b as follows:

PART 8b—[AMENDED]

1. The authority citation for Part 8b is revised to read as follows:

Authority: 29 U.S.C. 794.

2. Section 8b.18 is amended by revising paragraph (c) to read as follows:

§ 8b.18 New construction.

* * * * *

(c) *Conformance with Uniform Federal Accessibility Standards.*—(1) Effective as of (the effective date of this amendment) design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, § 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Thomas J. Collamore,

Assistant Secretary for Administration.

[FR Doc. 89–17329 Filed 7–24–89; 8:45 am]

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Reader Aids

Federal Register

Vol. 54, No. 141

Tuesday, July 25, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

27855-28016.....3
28017-28408.....5
28409-28664.....6
28665-28794.....7
28795-28998.....10
28999-29316.....11
29317-29528.....12
29529-29700.....13
29701-29874.....14
29875-30006.....17
30007-30204.....18
30205-30364.....19
30365-30534.....20
30535-30710.....21
30711-30880.....24
30881-31004.....25

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

302.....28964
305.....28964
310.....28964

3 CFR

Proclamations:
5995.....28409
5996.....28993
5997.....28999, 30633
5998.....29313
5999.....30873

Executive Orders:
May 5, 1855 (Revoked in part by PLO 6737).....30215
1500 (Revoked by PLO 6734).....30215
11958 (Amended by EO 12680).....28995
12163 (Amended by EO 12680).....28995
12171 (Amended by EO 12681).....28997
12680.....28995
12681.....28997
12682.....29315

Administrative Orders:
Presidential Determinations:
No. 89-16 of June 22, 1989.....28017

5 CFR

1201.....28632
1202.....28657
1203.....28658
1204.....28658
1205.....28662
1206.....28664
1209.....28654

Proposed Rules:
900.....28426
930.....30898

7 CFR

2.....28665, 30711
29.....27855
33.....29317
400.....28019, 28411
401.....28795
455.....30007
905.....29318, 30711
910.....28796, 29701, 30535
916.....27856, 30365
917.....27856, 29321, 30365
921.....29319
922.....29319
923.....29319
924.....29319
928.....29318
929.....29323
946.....27862
948.....29324
955.....29325
958.....29324
981.....30713
989.....29326
1040.....29327
1139.....30881
1260.....28019
1421.....30714
1446.....30366
1822.....29329
1823.....29329
1910.....29329
1941.....28019, 29329
1942.....29329
1943.....28019, 29329
1944.....29329
1945.....29329, 30882
1951.....28019, 28020, 28411, 29329
1955.....29329
1965.....29329
1980.....28021, 30882

Proposed Rules:
29.....27883
51.....30632
52.....30750
319.....29566
401.....28019, 28428, 28820
449.....28429
911.....29338
917.....30392
926.....30393
927.....29340
947.....29341
948.....30394
967.....30754
987.....29342
989.....29343
1036.....30898
1131.....30903
1446.....30395
1762.....27883
1864.....29569
1930.....29901
1944.....29901
1956.....29569
1965.....29569

8 CFR

100.....29438
103.....29438, 29440, 29875
210a.....29875
211.....30368
216.....30368
242.....29438
245.....29440
245A.....29434, 29442
264.....29438
299.....29438, 30369

Proposed Rules:
103.....29344

242 29050

9 CFR

92 29003

Proposed Rules:

54 29576
75 28070

10 CFR

2 ..... 27864, 29008
7 28554
26 29139
39 30883
51 27864
60 27864

Proposed Rules:

2 28822
30 30049
40 30049
50 ..... 30049, 30905
60 30049
70 30049
72 30049
150 30049
764 29732

12 CFR

226 28665
528 30535
531 30535

Proposed Rules:

5 28072
32 30054
202 29734
335 30976
523 30555
545 30555
561 27885
563 27885

13 CFR

115 30823

14 CFR

39 ..... 28022, 28023, 28025, 28026, 28028, 28554, 29008, 29009, 29529, 29530, 29534, 29535, 29537, 29538, 30007, 30009, 30718–30721, 30885, 30886
71 ..... 28029, 29539, 29540, 29817, 29888–29891, 30722
91 ..... 28769, 29698, 29892
97 ..... 28029, 30010
107 28765
108 28985

Proposed Rules:

Ch. I 28074
1 28978
14 29978
39 ..... 29050–29056, 29577, 30059–30062, 29579, 29580, 29582, 30755, 30757, 30758, 30906
43 30866
65 30866
Subpart E 30759–30762
71 ..... 28074, 29057–29059, 29907, 30633, 30759–30762
73 30762
75 ..... 29908, 29909
91 28978
108 28982
121 28978
125 28978
129 28978
135 28978
145 30866

15 CFR

50 29010
771 29011
774 28665
786 29011
799 30011

Proposed Rules:

8b 31002
25 28430

16 CFR

305 28031

Proposed Rules:

703 29910

17 CFR

34 30684
200 28796
201 28797
211 29333
240 ..... 28799, 30013
241 28799

Proposed Rules:

230 ..... 30063, 30076
240 30087
250 29739
259 29739

18 CFR

37 30370

19 CFR

10 28412
134 29540
141 28412
178 28412

20 CFR

218 30723
655 28037

Proposed Rules:

404 30907
416 30907

21 CFR

175 30731
177 29018
310 ..... 28772, 28780
520 ..... 29543, 30205
522 ..... 29543, 30205
524 ..... 29543, 30205, 30542
548 30205
556 28051
558 ..... 28051, 28154, 29335, 29544
573 29019
862 30206
1308 28414

Proposed Rules:

10 28872
310 28872
314 28872
320 ..... 28823, 28872
341 28442
610 30093
640 30093

22 CFR

34 28415
51 30373
514 30033

23 CFR

Proposed Rules:

625 ..... 29910, 30095
645 29910
658 29060

24 CFR

203 28053
235 30889

26 CFR

1 28576
602 28576

Proposed Rules:

1 ..... 28075, 28683, 29061

27 CFR

5 29701

Proposed Rules:

9 ..... 29739, 30398

28 CFR

Proposed Rules:

73 30910

29 CFR

70 30503
1910 ..... 28054, 28154, 29142, 29545, 29546, 30704
1915 29142
1917 29142
1918 29142
1926 ..... 29546, 30704
2550 30520
2610 ..... 27872, 28944, 29702
2619 29703
2622 27872
2644 27872
2670 29025
2675 29025
2676 29892

Proposed Rules:

1602 30097
1627 30097
1910 ..... 30401, 30557

30 CFR

20 30512
57 30508
75 30513
77 ..... 30513, 30515
938 29704

Proposed Rules:

75 30510
715 28443
761 30557
914 30764
916 29742
920 30098
936 29583

31 CFR

103 ..... 28416, 30542
316 30633
342 30633
344 28752
351 30633

Proposed Rules:

800 29744

32 CFR

199 30732
706 ..... 30206, 30375

Proposed Rules:

281 30227

33 CFR

100 ..... 28814, 29547, 30034–30037
117 ..... 30038, 30890
165 ..... 28814, 30544
167 28061

Proposed Rules:

100 29348

34 CFR

200 30736
203 30190
222 30039
303 30823

35 CFR

103 29335
117 29335
135 29335

Proposed Rules:

103 29584
133 29584

36 CFR

13 30005

37 CFR

1 ..... 29548, 30375
2 29548
201 27873

38 CFR

3 28445
17 ..... 28667, 28673
19 28445
21 28676
36 30382

Proposed Rules:

1 30099
36 ..... 28683, 30207

39 CFR

111 27879
221 29706
222 29706
223 29706
224 29706
225 29706
226 29706
227 29706
228 29706
229 29706

Proposed Rules:

3001 30557

40 CFR

52 ..... 27880, 29310, 29554, 30040, 29555, 29893–29895, 30891
82 ..... 28062, 29336
131 28662
141 29998
180 30632
228 ..... 29034, 29712
271 ..... 28677, 29557
704 ..... 30211, 30632
761 28418
763 29460
796 29715
797 29715

Proposed Rules:

22 29516

52.....28684, 28689, 29061, 29063, 29349
60.....28447, 29352
81.....29349
82.....29353
123.....30405
130.....30765
142.....29516
261.....30406
264.....30228
265.....30228
300.....29820
302.....29306
355.....29306, 30700
403.....30405
707.....29524

41 CFR

101-38.....30892
302-1.....29716

42 CFR

57.....28065
405.....29717
442.....29717
447.....29717
483.....29717
488.....29717
489.....29717
498.....29717

Proposed Rules:

424.....30558

43 CFR

Public Land Orders:

1742 (Revoked in part by PLO 6738).....30214
2301 (Revoked in part by PLO 6735).....30213
6702 (Corrected by PLO 6732).....30214
6725 (Corrected by PLO 6739).....30214
6729 (Corrected by PLO 6736).....30213
6731.....30973
6732.....30214
6733.....30213
6734.....30215
6735.....30213
6736.....30213
6737.....30215
6738.....30214
6739.....30214

Proposed Rules:

4.....30766
3160.....30766
5450.....29357
5460.....29357

44 CFR

64.....30384, 30545, 30547

Proposed Rules:

67.....30415
325.....30565

45 CFR

302.....30216
303.....30216
304.....30216
305.....30216

46 CFR

502.....29036

Proposed Rules:

588.....30425

47 CFR

1.....29037, 30548
2.....30041
22.....28815, 28816, 30895
73.....28677, 28678, 29038 29559-29561, 29719, 29720, 30041, 30042, 30389, 30549, 30737, 30738, 30896, 30897
74.....29039, 30043
80.....29040
90.....28678
97.....30823

Proposed Rules:

Ch. I.....28789
2.....28823
15.....28690, 28691, 28693
73.....27904, 28077, 28695, 28696, 29067, 29587, 29588, 29755, 29756, 30567, 30568, 30766, 30767
87.....28823

48 CFR

1.....29278
4.....29278
7.....29278
8.....29278
14.....29278
15.....29278
17.....29278
19.....29278, 30708
22.....29278
25.....29278
36.....29278
37.....29278
38.....29278
47.....29278
51.....29278
52.....29278, 30708
53.....29278
203.....30738
204.....28419
208.....30738
209.....30738
212.....30738
213.....30738
214.....30738
215.....30738
216.....30738
217.....30738
219.....30738
222.....30738
223.....30738
236.....30738
242.....30738
245.....30738
252.....30738
253.....30738
271.....30738
503.....29720
505.....29720
552.....29720
705.....28068
706.....28068
715.....28068
752.....28068
809.....30043
810.....30043
814.....30043
816.....30043
828.....30043
852.....30043
870.....30043
Ch. 18.....28186
2919.....30389

Proposed Rules:

15.....29296
43.....29296
47.....29984
52.....29296, 29984
203.....30911
209.....30911
219.....30101
246.....30101
252.....30911
914.....30569
915.....30569
916.....30230
917.....29757
935.....29757
952.....30569
970.....30230

49 CFR

89.....28680
171.....28750
172.....28750
173.....28750
176.....28750
178.....28750
192.....27881
193.....27881
195.....27881
390.....28818
391.....28818
393.....28818
571.....29041-29045, 30223
1011.....29337
1320.....30748

Proposed Rules:

390.....29912
512.....28696
571.....29067-29071, 29915, 30427, 30571
572.....29071

50 CFR

17.....29652, 29655, 29658, 29726, 30550
204.....30045
285.....29896
299.....29896
602.....30826
640.....30045
642.....29561, 30554
652.....30749
661.....28818, 29730, 30390
663.....30046
672.....28422, 28681, 30224
674.....28423, 30225
675.....30390

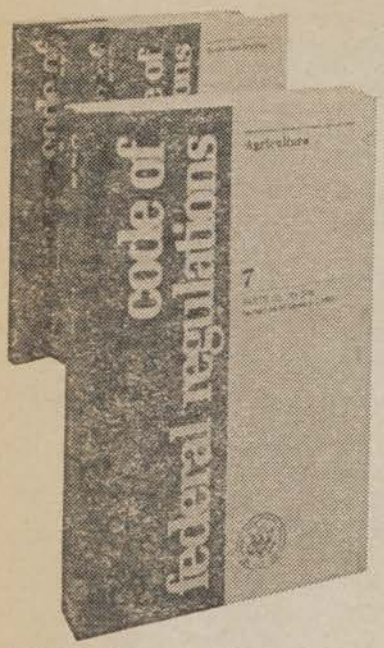
Proposed Rules:

17.....29915, 30572, 30577
20.....29640, 30858
285.....29359, 29916
672.....30102
675.....30102

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 24, 1989



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